ST. LOUIS, MAY 27, 1887.

The Central Law Journal.

CURRENT EVENTS.

OUR DIGEST OF RECENT CASES.—We beg to call the attention of our readers to the fact that in this issue of the JOURNAL our digest of recent cases contains abstracts of no less than three hundred and thirty-six cases, and that of a preceding issue (No. 19) a still larger number, three hundred and sixty-two cases. In order to make room for these abstracts, without diminishing the space always devoted to other departments in the JOURNAL, we added four pages to the reading matter of each of these issues. We intend to make a like addition to the reading matter whenever such addition becomes necessary, to keep our readers fully up with the decisions of the courts.

We have every reason to believe that our enterprise in this respect is fully appreciated by our subscribers, and that the improvement which we are making in this department of the JOURNAL will add much value to it in their eyes.

THE RELATIVE DIGNITY OF COURTS.—The Supreme Court of the United States has recently found it expedient and appropriate to administer to the Supreme Court of Louisiana what the *New Jersey Law Journal* denominates a rebuke for making light of the judgment of the United States Circuit Court. Speaking through Mr. Justice Matthews, it says: "The Supreme Court of Louisiana in this case erred in not giving due effect to the decree in question of the circuit court of the United States. The latter is a court co-ordinate to the Supreme Court of Louisiana in authority, and equal in dignity, being the highest federal court sitting in that State, whose judgments and decrees are final and conclusive, subject only to review and reversal in the Supreme Court of the United States. And their judgment or decree, when rendered, is binding and perfect between the parties until reversed, without regard to any adverse opinion or judgment of any other court of merely concurrent jurisdiction. Its integrity, its validity, and its effect are complete in all respects, between all parties in every suit, and in every forum, where it is legitimately produced as the foundation of an action, or of a defense, either by plea or in proof, as it would be in any other circumstances. While it remains in force it determines the rights of the parties between themselves, and may be carried into execution in due course of law to its full extent, furnishing a complete protection to all who act in compliance with its mandate, and, even after reversal, it still remains, as in the case of every other judgment or decree in like circumstances, sufficient evidence in favor of the plaintiff who instituted the suit or action in which it is rendered, when sued for a malicious prosecution, that he had probable cause for his proceeding."

Comparisons are proverbially odious, and we are a little surprised that the Supreme Court of the United States should indulge in them, especially when the parallelism is by no means obvious. It is very true that, in one single respect and to a limited extent, a circuit court of the United States is co-ordinate to the supreme court of a State. The rulings of the latter upon federal questions, and upon those only, are subject to review by the Supreme Court of the United States; *all* the decisions of a circuit court above a fixed numerical limit are subject to a like revisal. There the co-ordination and similitude begins and ends. The supreme court of a State is an appellate court of general jurisdiction and of the last resort in all cases, except the very few to which the revisory jurisdiction of the Supreme Court of the United States attaches. A circuit court of the United States is a court of the first instance, a trial court of limited jurisdiction, without any appellate powers except over the district courts within its circuit.

It is very true, as Mr. Justice Matthews says, that the judgment or decree of a circuit court of the United States "is binding and perfect, until reversed, without regard to any adverse opinion or judgment of any other court of merely concurrent jurisdiction. Its integrity, its validity, and its effect are complete in all respects, between all parties in every suit, and in every forum where it is legitimately produced as the foundation of

an action or of a defense, either by plea or in proof, as it would be in any other circumstances. While it remains in force it determines the rights of the parties between themselves, and may be carried into execution in due course of law to its full extent, furnishing a complete protection to all who act in compliance with its mandate."

While these *dicta* are undeniable, they are equally applicable to the judgments and decrees of the lowest courts of record of any State in the Union. They are all binding and perfect, until reversed, without regard to any adverse opinion or judgment of any other court of merely concurrent jurisdiction. There has been abundant legislation and judicial construction settling the relative jurisdiction of federal and State courts, but the *dicta* which we have quoted seem to open a new field of investigation hitherto unexplored on this side of the Atlantic; the relative dignity, apart from actual and technical jurisdiction, of State and federal courts, and their consequent precedence of each other. We have happily escaped, thus far, the necessity of considering any of the knotty problems concerning rank, title, dignity and precedence which have for centuries exercised official minds in the old world, but it would seem that the time has arrived or is near at hand, when we must formulate codes of precedence and dignity, if not of official personages in general, certainly of those who exercise judicial functions, and to do this in a satisfactory manner we presume that, in the near future, a new department must be added to our national government, something equivalent to a judicial Herald's College.

NOTES OF RECENT DECISIONS.

FREIGHT DISCRIMINATION—QUO WARRANTO—FORFEITURE OF CHARTERS.—The operation of the new interstate commerce act of congress seems to have awakened some of the State courts to the propriety, if not the necessity, of defining the powers of the great carrier corporations to discriminate between different shippers in their charges for transportation of goods wholly within a single State. A newspaper slip lies before us by which it appears that, on the 26th day of April last, the Supreme Court of Ohio tackled this problem and asserted its power, by the use, if necessary, of the most trenchant measures, to suppress the abuses and injustice growing out of partiality and favoritism.

There were two suits which were heard upon demurrer. They "were instituted by the State on relation of the Attorney General, —one against the Cincinnati, New Orleans & Texas Pacific Ry. Co., *i. e.*, the lessees of the Cincinnati Southern Ry. and its connections, and the other against the Cincinnati, Washington & Baltmore Ry. Co. The proceedings are in *quo warranto*, and are for a forfeiture of the charters of these corporations. The petitions charged these companies with conspiracy with the Standard Oil Co., and its various agencies, to build up that monopoly and crush out its competitors, by numerous acts of unlawful discrimination in freight rates on petroleum oils, such as charging exorbitant and extortionate rates; suddenly, without notice, raising rates that had been given and relied and acted upon; making discriminations, amounting in some instances to 243 per cent. difference in favor of the Standard Oil Co., and against other shippers, and many other violations of the rights of shippers under the laws governing common carriers. These petitions were filed by the attorney-general at the instance of Mr. Geo. Rice, of Marietta, one of the principal sufferers.

The railroad companies interposed demurrers to the petition, raising the questions whether the facts alleged constituted misuse or abuse of the franchise, rights and privileges conferred upon the corporations by the law of their creation, and whether the proceeding of *quo warranto* to oust them of their franchises and deprive them of their corporate existence is the proper remedy in such cases.

The two cases are substantially alike, except that the matters complained of in Cincinnati, New Orleans & Texas Pacific case were transactions occurring outside of Ohio.

The Supreme Court overruled the demurrers, thus settling the important doctrines that such acts are abuses and misuse of corporate franchise, which may be punished by a forfeiture of the charters of the corporations if the evidence sustains the charges; that *quo warranto* is the proper

remedy; and that our courts *may* deprive a corporation—an artificial creature of the State—of its continued existence and power to do mischief, when it violates the law of its creation and ceases to fulfil the design and purpose of its organization to be a common carrier for all alike, whether such abuse of its powers occurs in a *domestic* or an *interstate* transaction. We are informed that Judge Dickman dissents upon the last proposition."

We look forward with much interest to the perusal of the full text of the decision, thus briefly sketched, which will doubtless soon appear in the Reporters. In the meantime we will only remark that, as these grievances are of long standing, and the complaints have been repeatedly reiterated in many of the States, it is in every respect desirable that they should be thoroughly investigated, and the powers of the corporations in this important respect judicially settled and defined.

SOME POINTS CONCERNING ELECTIONS.

The purpose of this paper is to state the result of the recent judicial decisions concerning the methods prescribed for conducting elections and declaring their results in the first instance.

Notice of Election.—Valid elections cannot be held unless by authority of law.[1] Where the times and places for holding them are designated by law, electors may take notice thereof, and votes cast accordingly will be valid, notwithstanding that an officer charged with giving notice of the election and of the officers to be chosen has neglected his duty. Notice, independently of statute, would not authorize an election; and the failure to give it cannot prevent voters, in the case of general and regularly recurring elections for officers who are to be elected for a full term, from exercising their constitutional rights.[2] Voters have, however, a right to be apprised by the proper authorities of the time when, place where, and for what officers they may cast their ballots; and *mandamus* lies to compel officers charged with that duty to act.[3] If a vacancy is filled at a general election in pursuance of a positive provision of law, failure to give notice thereof will not invalidate it if the electors, as a matter of fact, have knowledge through the newspapers or other channels.[4] But if such provision is so connected with the statute concerning notice that the latter cannot be complied with after the vacancy occurs, the election will be invalid;[5] and the same result follows where the statute is not imperative in requiring the vacancy to be filled at a general election, and notice is not given and the votes show that it was not generally known that the vacancy was to be filled;[6] also where the statute is imperative, if the meagerness of the votes cast shows that the electors were not informed.[7] In California, the position is taken that voters are not bound to take notice of vacancies caused by death or resignation, and votes cast for candidates to fill them, though cast at a general election, do not constitute an election. Proclamation or notice must be made or given by the officer charged with that duty.[8] The number of votes cast, or other circumstances connected with the election, do not appear to be considered of any importance as affecting this principle. This doctrine is held by the authorities generally where the law does not fix the time and place of the election, but devolves that duty upon an officer or a body.[9] The power to call such

[1] Matthews v. Board, 9 Pac. Rep. 765; People v. Crissey, 91 N. Y. 616, 634.

[2] Jones v. Gridley, 20 Kan. 584; Morgan v. Board, 24 *Id.* 71; Cooley's Const. Lim. 758. This is recognized by nearly all the cases as the correct rule.

[3] State v. Ware, 10 Pac. Rep. 885 (Oregon); State v. Brown, 38 Ohio St. 345; Stephens v. People, 89 Ill. 337, 344.

[4] State v. Orvis, 20 Wis. 235; State v. Goetze, 22 *Id.* 363; Foster v. Scarff, 15 Ohio St. 532; State v. Skirving, 27 N. W. Rep. 723 (Neb.); People v. Hartwell, 12 Mich. 508; People v. Witherell, 14 *Id.* 48; State v. Jones, 19 Ind. 356.

[5] Beal v. Ray, 17 Ind. 554. *Contra:* People v. Cowles, 13 N. Y. 350, ruled under a mandatory constitutional provision.

[6] Secord v. Foutch, 44 Mich. 89; People v. Witherell, 14 *Id.* 48. See People v. Canvassers, 11 *Id.* 111.

[7] State v. McKinney, 25 Wis. 416; Foster v. Scarff, 15 Ohio St. 532; Bolton v. Good, 41 N. J. L. 296; Barry v. Lauck, 5 Cold. (Tenn.) 588.

[8] Westbrook v. Rosborough, 14 Cal. 180; Kenfield v. Irwin, 52 *Id.* 164; People v. Thompson, 9 Pac. Rep. 833.

[9] Morgan v. Gloucester City, 44 N. J. L. 137; People v. Crissey, 91 N. Y. 616, 635; Stephens v. People, 89 Ill. 337; Marshall v. Cook, 38 *Id.* 44; Force v. Batavia, 61 *Id.* 99; Hubbard v. Williamstown, 61 Wis. 397; Pratt v. Swanton, 15 Vt. 147.

elections cannot be delegated,[10] and an election held upon the call of any other than the proper authority cannot be ratified.[11] A statute which fixed the time for holding elections for the purpose of determining whether licenses should be granted for the sale of liquors in certain counties, made it the duty of the sheriff to post notices thereof at every voting place or precinct in his county, not less than twenty days preceding the election. Failure to post the notices invalidated the election.[12]

Notice is dispensed with where an amendment to the statute requiring the election of an officer previously appointed went into effect too late for the statutory notice to be given. The amendment, so far as the particular election and officer were concerned, repealed the requirement of notice.[13]

Essentials of Notice.—The notice must contain enough to inform the electors of all the facts it is important for them to know. If it leave to inference the place in which the election will be held, or the place or places where the polls will be, or the time of opening and closing them, it will be insufficient;[14] or if it is not given for the prescribed time;[15] or does not provide for elections at all the precincts established by law.[16] Where notice is required to be given according to the by-laws of a town, and there are no by-laws on the subject, it must be given a reasonable time before the town meeting; seven days held to be a reasonable time.[17] Where it is required to be given by a body, the signatures of a majority of the members thereof are sufficient;[18] and the omission of their title of office does not necessarily render it void.[19]

In the absence of express direction that the warrant shall specify all the offices to be voted for, an expression, "to vote for government officers," in the case of a general election, will be good;[20] and in the case of a town election, "to choose all necessary town officers."[21] It seems that if two or more officers of the same class, designated by the same title, might be legally elected at the same time, and the notice given indicates that only one is to be chosen, that though two persons were voted for, on different tickets, they will be regarded as opposing candidates, and the one who received the largest number of votes will be elected.[22] Where only one officer of a class is to be elected, and he for an unexpired term, failure of the notice to indicate that the election was for an unexpired term, will not affect its length.[23] If voters are duly informed previous to a general election that a vacancy has occurred in an office, and that an officer is to be elected to fill the unexpired term, it is sufficient without designating such election as special.[24]

If officers act fairly in posting notices of elections it will not be inquired whether they posted them in "the most public places" in the town.[25] Notices of a school-district election were all posted on buildings occupying three of the corners formed by two cross-roads and within a circumference of eighty feet. A finding that they were the most public places was sustained.[26]

Place of Holding.—In the leading case on this branch of the subject, it is said that, where the law, or the proper authority acting in pursuance of law, has fixed the place for holding an election, it is as essential that it be held there as that it be held at the time designated; and that, in ordinary cases at least, the holding of it elsewhere will be error. The necessity which justifies holding it at any other place must be absolute, discarding all mere ideas of convenience. In this case, the polling places in three pre-

[10] Illinois cases cited in last note.
[11] Stephens v. People, *supra*.
[12] Haduox v. County of Clarke, 79 Va. 677.
[13] Powell v. Jackson, 51 Mich. 129.
[14] Morgan v. Gloucester City, 44 N. J. L. 137, ruled under a provision that the election shall be held at the usual place or places for holding annual charter elections. The notice was of a special election. Hodgkin v. Fry, 33 Ark. 716, holding that, where the time is fixed by law the notice need not state it; but must name the place where it is not fixed.
[15] State v. Young, 4 Iowa, 561; Hubbard v. Williamstown, 61 Wis. 397; Pratt v. Swanton, 15 Vt. 147.
[16] Territory v. Steele, 23 N. W. Rep. 91 (Dakota.)
[17] Rand v. Wilder, 11 Cush. 294; Commonwealth v. Smith, 132 Mass. 289.
[18] Reynolds v. New Salem, 6 Met. 340; Commonwealth v. Smith, *supra;* Holland v. Davies, 36 Ark. 446.
[19] Commonwealth v. Smith, *supra*.
[20] *Ibid.*
[21] Williams v. Lunenberg, 21 Pick. 75; Sherman v. Tarrey, 99 Mass. 472.
[22] People v. Canvassers, 11 Mich. 111. See Secord v. Foutch, 44 *Id.* 89, 91.
[23] Parmater v. State, 3 N. E. Rep. 382.
[24] Tillson v. Ford, 53 Cal. 701.
[25] Sauerhering v. R. R. Co., 25 Wis. 447.
[26] People v. Lansing, 55 Cal. 393.

cincts were located at distances varying from a little more than half a mile to three miles distant from the places designated, and the votes in all were rejected.[27] The same result was reached in a California case where the polls were opened and the voting done at a place three miles distant from that designated.[28] The rule of these cases has been very strictly applied in a recent case. In one precinct, the polling place was removed to a building about two hundred feet distant from the designated place; and in another across a railroad from the building selected, distance not stated. It was alleged that no voter in either case was ignorant of the change or lost his vote by reason thereof; and nothing appeared to show either reason or necessity therefor.[29] A different view is taken in Michigan. The election officers met at the proper place and organized. Before receiving any votes they adjourned to meet in another school-district in the same township, presumably a considerable distance from the first place of meeting. The electors present at the time of the adjournment were notified thereof, and a person was left at the place of the first meeting to notify all who might come. The *bona fides* were submitted to a jury which found that the change was made in good faith for the purpose of accommodating the larger number of voters, that two electors "did not vote because of the change made and other business, and that several objected to the removal of the place of voting;" that it did not appear that any others neglected to vote because of the adjournment, or that those who stayed away, if any, would have voted for the claimant if the change had not been made. The court refused to set aside the vote of the town because the claimant failed to show that he was injured.[30]

In Wisconsin, annual town meetings are deliberative bodies, except as to the election of such officers as are required to be voted for by ballot. All other business must be submitted in the form of motions. Under a statute requiring such meetings to be held at the places where the last were held, unless they have been ordered to be held at some other place by a previous meeting, the place of holding the next meeting cannot be changed by the votes of a large majority of those who voted for town officers, such votes being on the ballots cast. An election held at the place thus designated was void, another having been held at the place where that last preceding was.[31]

If voters have by general consent selected a place for holding elections and have voted there for years, the fact that the authorities have not made a formal designation of it for such purposes will not invalidate elections held there; neither will the fact that the building used as a polling place had been moved three-fourths of a mile from its former site.[32]

If there is a necessity for a change in the place of holding the election, as where the owner of the building at which it was appointed to be held refuses to allow it to be used, the result will not be affected by holding it at some other place as near as may be to that where it was to have been held.[33] If the place is to be designated by an officer or by two officers, acting together, the officer authorized must act, or in the other case both must act.[34] On the ground of a sound public policy one who participates in an election by becoming a candidate for office cannot be heard to complain of his defeat because the election was held at an improper place.[35]

Opening and Closing Polls.—It is well settled that, unless there has been some impediment placed in the way of voters, or fraudulent conduct affecting the result of the voting has been induced by neglect to open the polls, keep them open and close them at and during the hours specified by law, except there is an express provision of law to the contrary, that slight deviations will not invalidate an election, if it is not made to affirmatively appear that the result would have been different

[27] Melvin's Case, 68 Pa. St. 333; Brightly's Elec. Cas. 251. But see *In re* Wheelock, 82 Pa. St. 297, holding that an election held forty rods from the designated place was not invalid, nothing appearing to show that the result was affected thereby.

[28] Knowles v. Yeates, 31 Cal. 82.

[29] Simons v. People, 18 Bradw. (Ill.) 588. See Stephens v. People, 89 Ill. 337, relied on in the principal case.

[30] Farrington v. Turner, 53 Mich. 27.

[31] State v. Davidson, 32 Wis. 114.

[32] Steele v. Calhoun, 61 Miss. 556.

[33] Dale v. Irwin, 78 Ill. 170; Preston v. Culbertson, 58 Cal. 198.

[34] Stephens v. People, 89 Ill. 337.

[35] People v. Waite, 70 *Id.* 25.

but for the occurrence of such irregularities.[36] In the Pennsylvania case cited, it is said that when the poll is kept open after the usual hour and the number of votes polled afterwards cannot be clearly ascertained, if all of them would not change the result, the election will not be set aside. If the deviation in the time during which the polls were open is so considerable as to raise the presumption, in connection with other facts and circumstances, as unusally light vote, that the result was affected thereby, the returns will not be considered.[37]

Qualifications of Election Officers.—There is no dissent from the doctrine that the acts of election officers *de facto*, in the absence of fraud, so far as they affect third parties or the public, are as valid as those of officers *de jure*. An election is not invalidated because some of the officers who conducted it were not freeholders;[38] or not citizens;[39] or were candidates at the election;[40] or were appointed by a school commissioner instead of being elected by the voters;[41] or were not sworn;[42] or were disqualified by virtue of a constitutional provision;[43] nor because of irregularity in the *jurat* attached to their oaths.[44] This rule has been so uniformly held by the courts that it has been recognized and acquiesced in by the house of representatives, though formerly the precedents were against it.[45] It may be interesting to recall the fact, as an illustration of the change that time hath wrought, that the governorship of New York was secured by George Clinton on the principle which is now so generally disapproved. In 1792 he and John Jay were candidates for governor. The former was declared elected by rejecting the ballots cast in three counties. The votes cast in the county which changed the result were rejected upon the ground, that the person who took them to Albany and delivered them to the secretary of State, for the purpose of being counted and canvassed by a joint committee of the legislature, was not properly authorized to do so. The sheriff of the county had accepted an incompatible office and his successor had not qualified. He accepted the ballots and deputed the bearer to deliver them. The law required the ballots to be sealed up before they were delivered to the sheriff, so that if the seal was broken it would be known.[46]

In a recent case,[47] the regular judges of election refused to attend or act. Two sets of judges were chosen by the assembled electors at different times, both before the hour at which either might have been properly elected. Each conducted an election independently of the other. The board last chosen was held to be the proper one, apparently because it was chosen last and recognized by a larger number of electors. A majority of the officers whose duty it is to conduct an election must act or the result will not be binding.[48]

Returns, Poll-books, etc.—Mere informalities will not authorize a canvassing board to reject the returns of a precinct: as failure to fill the blanks in the headings of the poll-book, or blank in the certificate intended to show the number of electors who voted;[49] or to seal the poll-book before sending it to the county clerk, if it does not appear to have been tampered with;[50] or to sign the certificate showing the result of the election. This may be cured by permitting it to be done before the canvass is completed, and *mandamus* lies to the canvassing board to allow it to be done.[51] It is not a fatal defect if returns are on undetached papers;[52] nor if the statement

[36] Holland v. Davies, 36 Ark. 446; Swepston v. Barton, 39 *Id.* 549; Knox Co. v. Davis, 63 Ill. 405; Platt v. People, 29 *Id.* 54; Locust Ward Election Case, 3 Penn. L. J. Rep. 11; cases in which the polls were kept open later than the prescribed time. Du Page Co. v. People, 65 Ill. 360; Fry v. Booth, 19 Ohio St. 25; cases in which the polls were closed while the election officers took dinner. Cleland v. Porter, 74 Ill. 76, polls closed one hour before the designated time.

[37] Penn. District Election, 2 Pars. Eq. Cas. 526 (polls closed two hours before the time fixed and a very light vote); People v. Seale, 52 Cal. 71 (polls opened at one o'clock P. M. and closed at six o'clock P. M., when they should have been open from one hour after sunrise until sunset).

[38] Collins v. Huff, 63 Ga. 207.

[39] Opinion of Justices, 70 Me. 565.

[40] Trustees v. Garvey, 80 Ky. 159; Sprague v. Norway, 31 Cal. 173.

[41] Sargent v. Wilder, 71 Me. 380; Bisbee v. Board, 17 Fla. 1.

[42] Wells v. Taylor, 5 Mont. 202.

[43] Swepston v. Barton, 39 Ark. 549.

[44] State v. Sillon, 24 Kan. 13.

[45] McCrary's Elec. (2d ed.) §§ 76-79.

[46] See People v. Livingston, 79 N. Y. 279, 285.

[47] Kirkpatrick v. Vickers, 24 Kan. 314.

[48] People v. Laenna, 67 Ill. 65; Lippincott v. Pana, 92 *Id.* 24.

[49] State v. Sillon, 24 Kan. 13.

[50] Patton v. Coates, 41 Ark. 111.

[51] People v. Nordheim, 99 Ill. 553.

[52] Privett v. Stevens, 25 Kan. 275.

of the votes cast for a candidate is repeated;[53] nor if there is an error and contradiction concerning the law under which the election was held;[54] nor if the statement of the number of votes cast is set out below the names of the inspectors;[55] nor if there was a failure to comply with the law regulating the manner in which the votes should be kept;[56] nor delay in making returns beyond the period prescribed;[57] nor in sealing the ballot-boxes, if it be made to affirmatively appear that they have been kept undisturbed;[58] nor in transmitting the poll-book to the county clerk through a person who was not an elective officer, contrary to the statute;[59] nor by stating something in the returns which is not required;[60] nor because they were signed by only a majority of those who acted as officers of the election;[61] nor because the poll-book is certified to by different judges from those appointed, it being presumed that those who certified to it were substituted by the voters in the manner authorized by the law.[62] A school tax is not invalidated because the judges of the election failed to state specifically in their return the number of votes cast for and against, and for each amount or rate voted for. The defect is cured by the poll-book and ballots returned.[63]

Formerly returns not attested by the town, city or plantation clerk were invalid;[64] but under a later statute a duly attested copy may be substituted for the original.[65]

Miscellaneous.—It is not a sufficient reason for rejecting the returns, that the clerk of the election was absent for forty minutes and ballots were received during that time, nor because persons not officers assisted in counting the votes—the ballots being preserved and returned;[66] nor because there was neglect to number the ballots and count and string them on thread or twine in the order of their reading, nor because others than officers assisted in the count;[67] nor because the boxes were temporarily out of the possession of the officers.[68] In a recent election, the officers of two precincts, following the advice of citizens, provided three ballot-boxes and placed them twenty or thirty feet apart. The officers each took special charge of one box, all, however, joining in the decision of questions which arose. The expedient was resorted to because it was apparent that all who desired to vote could not do so unless more than one box was provided. The court was clear that the arrangement was illegal; but it did not appear that the result was affected by the additional facilities, and the election was not set aside.[69]

Madison, Wis. J. R. BERRYMAN.

[53] Bisbee v. Board, 17 Fla. 1.
[54] *Ibid.*
[55] People v. Ruyle, 91 Ill. 525.
[56] People v. Higgins, 3 Mich. 233.
[57] Cresap v. Gray, 10 Oreg. 345.
[58] People v. Livingston, 79 N. Y. 279; O'Gorman v. Richter, 31 Minn. 25; Newton v. Newell, 26 *Id.* 529; Long v. State, 17 Neb. 60.
[59] Willeford v. State, 43 Ark. 62.
[60] State v. Berg, 76 Mo. 136.
[61] Opinion of Justices, 70 Me. 562.
[62] Patton v. Coates, 41 Ark. 111.
[63] Holland v. Davies, 36 Ark. 446.
[64] Opinions of Justices, 68 Me. 588; 70 *Id.* 564.
[65] Rounds v. Smart, 71 *Id.* 380.
[66] Bacon v. Malzacher, 102 Ill. 663.
[67] Hodge v. Linn, 100 *Id.* 397. To the same effect as to outside aid in counting is Sprague v. Norway, 31 Cal. 173.
[68] Whipley v. McKune, 12 Cal. 352.
[69] Weil v. Calhoun, 25 Fed. Rep. 865.

CHARITIES — RELIGIOUS SOCIETIES — PAROL EVIDENCE — AMBIGUITY — ILLINOIS STATUTE.

GILMER V. STONE AND WALKER, EXECUTORS.

Supreme Court of the United States, March 7, 1887.

1. *Charities—Ambiguity.*—With respect to charities, gifts may be good which would be void as to individuals. If there exists ambiguity in a bequest to a religious society, it will be carried into effect if the doubt as to which was meant of two or more objects of charity, can be removed.

2. *Evidence—Parol.*—Parol evidence is admissible to remove a doubt as to which of several similar religious bodies was intended by the testator to be the object of his bounty.

3. *Illinois Statute.*—The statute of Illinois (Act of April 18, 1872), limiting the lands of any religious body to ten acres, applies only to lands held for purposes of worship, and not to those held by benevolent or missionary societies.

Mr. Justice HARLAN delivered the opinion of the court:

Robert Gilmer, late of Irish Grove, Menard county, Illinois, died December 31, 1883, having made a last will by which he disposed of his entire estate, consisting of about four thousand dollars in personal property, and from three to four hundred acres of land in that State. The eleventh clause of the will is in these words: "I also, af-

ter paying all debts and claims against my estate, bequeath and devise the remainder of my estate to be equally divided between the board of foreign and the board of home missions." The object of the present suit is to obtain a decree declaring that clause to be void, and directing the estate of the testator, after meeting the debts and the bequests contained in other clauses, to be paid to the complainant, the uncle and only heir-at-law of the decedent.

The "board of foreign missions of the Presbyterian church in the United States of America" and the "board of home missions of the Presbyterian church in the United States of America"—corporations created under the laws of New York—severally appeared, were made defendants, and filed answers, each claiming the right to share in the devise in the eleventh clause of the will. The executors admit the justice of these claims, but ask the direction of the court in the premises. To these answers a general replication was filed; and, the cause having been heard upon the pleadings and proofs, the bill was dismissed with costs.

It is agreed in the case that the Baptist, Methodist, Episcopal and other churches, like the Presbyterian church in the United States of America, have boards of home and foreign missions; consequently, it is contended, the eleventh clause of the will is void for uncertainty as to the donee and the purposes of the gift. In this view we do not concur. It is undoubtedly the rule, in respect to the testamentary disposition of property, real and personal, that uncertainty, either as to the subject or object of a devise, will be fatal to its validity. But that rule has no application here; for, if there were no other fact in the case than that there are numerous boards which may be generally described by the words, the "board of foreign missions," and the "board of home missions," the devise in the eleventh clause would not fail. With respect to charities, gifts may be good which, with respect to individuals, would be void; "and where there are two charities of the same name, the legacy will be divided between them, if it cannot be ascertained which was the intended object." 1 Jarman on Wills, 376. Can it be ascertaided by competent evidence which of these various boards were the objects of the testator's bounty?

In the fourth clause of the will, the testator bequeathed his library to the Presbyterian church of Irish Grove; in the ninth, five hundred dollars toward the erection of a Presbyterian church in Greenview, Illinois, provided the same was built within two years from the date of the will; otherwise, the money will revert to his estate; and in the tenth, he bequeathed fifty dollars to be paid on the minister's salary of the Presbyterian church of Irish Grove for the year 1884.

And there was extrinsic evidence to the following effect: That the testator had been for many years a member and ruling elder of the Irish Grove Presbyterian church, one of the local congregations of the Presbyterian church in the United States of America; that collections were annually taken up in that congregation for the various boards of that church, including its boards of foreign and home missions; that while it was announced from the pulpit that collections would be taken for the board of foreign missions or the board of home missions, without, in words, naming the Presbyterian church, all such collections, with the knowledge and assent of the church session, of which the testator was an active and zealous member, were, without exception, sent to the officers of the Presbyterian boards of foreign and home missions in New York city, and regular reports thereof made to the session; that the testator took especial interest in the work of those particular boards and uniformly contributed thereto; and that he did not, so far as his pastor or associates in the church session knew, make contributions to the societies of any other church, except to the Bible society, which was sustained by several religious organizations.

Of the competency of this evidence there can be no doubt. The purpose of it was to place the court, as far as possible, in the situation in which the testator stood, and thus bring the words employed by him into contact with the circumstances attending the execution of the will. Such proof does not contradict the terms of that instrument, nor tend to wrest the words of the testator from their natural operation. It serves only to identify the institutions described by him as "the board of foreign and the board of home missions;" and thus the court is enabled to avail itself of the light which the circumstances, in which the testator was placed at the time he made the will, would throw upon his intention. "The law is not so unreasonable," says Mr. Wigram, "as to deny to the reader of an instrument the same light which the writer enjoyed." Wigram on Wills (2d Amer. Ed.), 161. The proof made a case of latent ambiguity. Such an ambiguity may arise, "either when it names a person as the object of a gift or a thing as the subject of it, and there are two persons or things that answer such name or description; or, secondly, it may arise when the will contains a misdescription of the object or subject." Patch v. White, 117 U. S. 217. In the same case it was observed that, "as a latent ambiguity is only disclosed by extrinsic evidence, it may be removed by extrinsic evidence." See, also, Allen's Ex'ors v. Allen, 18 How. 385, 393; Hinckley v. Thatcher, 139 Mass. 477; Breckinridge v. Duncan, 2 Mar. 51; Morgan v. Burrows, 45 Wis. 217; Brewster v. McCall, 15 Conn. 273; Tilton v. Society, 60 N. H. 382; 1 Jarman on Wills, 423, 431; 1 Greenl. Ev., § 290.

Construing, then, the will with reference to the extrinsic evidence of the uniform relations of the testator to the subject of foreign and home missions, and to certain societies engaged in that kind of work, it is not to be doubted that, in the

eleventh clause, he had in mind the boards of foreign and home missions of the general religious society or organization of which he was a member and officer. The words of the will very well apply to such an object, and, therefore, in so interpreting its provisions, no violence is done to the language employed by the testator.

It is also contended that the boards of foreign and home missions of the Presbyterian church in the United States of America are foreign religious societies, or foreign societies organized for religious purposes, and, as such, cannot, under the laws of Illinois, take exceeding ten acres of land each, and that the devise in the eleventh clause, being of more than three hundred acres of land jointly, is void and must fail.

In the case of Christian Union v. Yount, 101 U. S. 360, decided in 1879, we considered the question whether a conveyance made in 1870, by a citizen of Illinois, of real estate there situated, of the value of $10,000, to the American and Foreign Christian Union, a New York corporation, was void under the laws of Illinois—the object of that corporation being, "by missions, colportage, the press, and other appropriate agencies, to diffuse and promote the principles of religious liberty and a pure evangelical Christianity, both at home and abroad, wherever a corrupt Christianity exists." The validity of the conveyance was sustained upon the ground that the law of Illinois, as it existed in 1870, did not preclude a benevolent or missionary corporation of another State, being thereunto authorized by its own charter, from taking title to real estate within her limits, by purchase, gift, devise, or in any other manner.

It is, however, insisted that the force of that decision is weakened, if not destroyed, by the failure of the court to refer to section 44 of chapter 24 of the Revised Statutes of 1845, making it lawful for "the members of any society or congregation," theretofore formed or thereafter to be formed, "for purposes of religious worship," to "receive by gift, devise or purchase, a quantity of land not exceeding ten acres, and to erect or build thereon such houses and buildings as they may deem necessary for the purposes aforesaid, and to make such other use of the land and make such other improvements thereon as may be deemed necessary for the comfort and convenience of such society or congregation." Rev. Stat, 1845, p. 120. Counsel overlook the fact that the court, in Christian Union v. Yount, referred incidentally, and as indicating the general course of legislation in Illinois, to the like provision in the act of 1872. No comment was made upon that provision, for the reason that it had no application to the case; there being no claim, as there could not well have been, that the American and Foreign Christian Union was, within the meaning of the statute, a society or congregation "for purposes of religious worship."

In St. Peter's Roman Catholic Congregation v. Germain, 104 Ill, 440, the supreme court of the State held that the forgoing section of the act of 1845 was not repealed by the act of March 8, 1869, providing "for the holding of Roman Catholic churches, cemeteries, and other property," but was displaced by the 42d section of the act of April 18, 1872, (chapter 32 of the Revision of 1874), which last section, however. the court said, was substantially the same as the 44th section of the act of 1845, and to be regarded as, in effect, merely in continuing the latter in force.

We have, therefore, to inquire whether the devise in question is void under the act of April 18, 1872. That act makes provision for the formation of corporations for any lawful purpose, except banking, insurance, real estate brokerage, the business of loaning money, and the operation of railroads, other than horse and dummy railroads. It also makes provision for the incorporation of societies, corporations, and associations for any lawful purpose, and for pecuniary profit, "capable of taking, purchasing, holding and disposing of real and personal estate for purposes of their organization." Secs. 29, 31.

The act proceeds:

"Sec. 35. The foregoing provisions shall not apply to any religious corporation; but any church, congregation, or society formed for the purpose of religious worship, may become incorporated in the manner following, to wit: * * *

"Sec. 41. Upon the incorporation of any congregation, church or society, all real and personal property held by any person or trustees for the use of the members thereof, shall immediately vest in such corporation and be subject to its control, and may be used, mortgaged, sold and conveyed the same as if it had been conveyed to such corporation by deed; but no such conveyance or mortgage shall be made so as to affect or destroy the intent or effect of any grant, devise or donation that may be made to such person or trustee for the use of such congregation, church or society.

"Sec. 42. Any congregation that may be founded for religious purposes under this act or under any law of this State for the incorporation of religious societies, may receive by gift, devise or purchase, land not exceeding in quantity (including that already held by such corporation) ten acres, and may erect or build thereon such houses, buildings or other improvements as it may deem necessary for the convenience and comfort of such congregation, church or society, and may lay out and maintain thereon a burying ground; but no such property shall be used except in the manner expressed in the gift, grant or devise, or, if no use or trust is so expressed, except for the benefit of the congregation, church or society for which it was intended."

The 45th section permits any congregation, church, or society incorporated under the act, to receive by grant, devise or bequest, real estate, not exceeding forty acres, for the purpose of holding camp-meetings. Rev. Stat. 1874, pp. 292-3.

Assuming, for the purposes of this case only,

that a church, congregation, or society formed under the laws of another State, for purposes of religious worship in that State, could not lawfully receive by gift, devise or purchase, land in Illinois, in excess of the quantity which may be received in either of those modes by a similar corporation formed under the laws of Illinois, we are satisfied that the sections last quoted from the act of 1872 do not embrace corporations of the class to which these boards of foreign and home missions belong. The board of foreign missions of the Presbyterian church in the United States of America was formed "for the purpose of establishing and conducting Christian missions among the unevangelized or pagan nations and the general diffusion of Christianity." Its power to hold real or personal estate in New York is restricted to such quantity as will produce an annual income not exceeding $20,000. The object of the board of home missions of that church is "to assist in sustaining the preaching of the gospel in feeble churches and congregations in connection with the Presbyterian church in the the United States, and generally to superintend the whole of home missions in the behalf of such church as the general assembly shall, from time to time, direct; and also to receive, take charge of, and disburse all property and funds which, at any time, and from time to time, may be intrusted to said church or said board for home missionary purposes." It cannot take and hold real or personal property, the annual income of which shall exceed $200,000.

While these boards are important agencies in aid of the general religious work of the Presbyterian church in the United States of America, neither of them is, in any proper sense, or in the meaning of the 35th section of the act of 1872, a church, congregation, or society formed for the purpose of *religious worship*. The counsel for the plaintiff in error seem to lay stress upon the more general words, "formed for religious purposes," in the 42d section of the act; but manifestly the other parts of the same section, and previous sections, show that the only corporations intended to be restricted in the ownership of land to ten acres, were those formed for the purpose of "religious worship," and not to organizations commonly called benevolent or missionary societies. The reasons of public policy which restrict societies, formed for the purpose of religious worship, in their ownership of real estate, do not apply at all, or, if at all, only with diminished force, to corporations which have no ecclesiastical control of those engaged in religious worship, and cannot prescribe the forms of such worship, nor subject to ecclesiastical discipline those who fail to conform to the rules, usages, or orders of the religious society of which they are members.

This conclusion does not, in the slightest degree, conflict with the decision in St. Peter's Roman Catholic Congregation v. Germain. That was the case of a conveyance of about eighty acres of land directly to a congregation or society "formed for the purpose of religious worship," as distinguished from a benevolent or missionary organization. The court held that, under the legislation of Illinois, "a religious corporation is authorized to receive or acquire lands to the extent of ten acres and no more. Any amount in excess of that is expressly forbidden by statute, and it follows that all conveyances, deeds, or other contracts made in violation of this prohibition, are absolutely void."

As the eleventh clause was intended to pass, and was valid for the purpose of passing, to the boards of foreign and home missions of the Presbyterian church in the United States of America the estate thereby devised, the decree must be affirmed.

NOTE.—*Charitable Uses.*—Ordinarily three things are necessary to raise a valid trust. First. Sufficient words to create it. Second. A definite subject. Third. A certain or ascertained object. But trusts for "charitable uses" form a large and important class of trusts which are an exception. They are governed in many respects by the same rules that govern trusts for private persons, but if it is once determined that the donor intended to create a public charity, very different rules apply to give effect to the intent of the donor. Thus, uncertainty in the object is one of the characteristics of "a true, technical, charitable use, because if the beneficiaries are defined with precision, the ordinary doctrine of equity would be sufficient to support it." "A trust for a charity which is declared with the same certainty in all respect as ordinary trusts, is, of course, capable of being sustained by the ordinary rules of property;[1] but a trust which, according to those rules, would fail for uncertainty, is upheld in chancery, when the beneficiaries are objects of charity, and is then a charitable use."[2]

The origin of these trusts was at one time ascribed to the statute of 43 Eliz., ch. 4, commonly called the statute of charitable uses, but this is now conceded to have been erroneous, and it has been shown that before that statute, the court of chancery had exercised a jurisdiction in establishing, regulating and enforcing gifts and grants to charitable uses.[3]

It is now conceded as settled, that courts of equity in this country have an original and inherent jurisdiction over charities independant of the statute.[4]

The importance of this final determination is at once apparent, for if the statute of 43 Elizabeth is not enforced in any State, the courts of equity of that State could exercise no jurisdidtion over charitable uses, unless by virtue of their inherent powers, which it is thus admitted they possess.

The subjects embraced in the statute are, "relief of aged, impotent and poor people; maintenance of sick

[1] Liley v. Hey, 1 Hare, 580; Old South Society v. Crocker, 119 Mass. 1.

[2] Bispham on Eq. § 116; Jackson v. Phillips, 14 Allen, 550; Perry on Trusts, § 687.

[3] Vidal v. Girard's Exrs., 2 How. 151. Mr. Binney's argument in this case contains all that is of value of the "proceedings in chancery" applicable to the case. See pp. 151-160.

[4] Vidal v. Girard's Exrs., 2 How. 128; Jackson v. Phillips, 14 Allen, 558; Grimes v. Harmon, 35 Ind. 246; Burr's Exrs. v. Smith, 7 Vt. 241; Chambers v. St. Louis, 29 Mo. 543; Gillman v. Hamilton, 16 Ill. 225; Potter v. Thornton, 7 R. I. 263; Erskine v. Whitehead, 84 Ind. 359.

and maimed soldiers and mariners; schools of learning, free schools and scholars in universities; repairs of bridges, ports, havens, causeways, churches, sea-banks and highways; education and preferment of orphans; relief, stock or maintenance for houses of correction; marriages of poor maids; supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; aid or ease of any poor inhabitants concerning payment of fifteens, setting out soldiers and other taxes."[5]

All the objects thus set out are considered charitable, and, in addition, many not mentioned therein are now so considered as being within the "spirit, equity and analogy," though not within the strict letter of the statute.[6]

Various definitions have been given of charitable gifts, but that of Mr. Justice Gray, in Jackson v. Phillips, is considered the best and most comprehensive. He defines it as follows: "A charity in a legal sense may be more fully defined as a gift to be applied, consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature."[7]

Gifts for charitable purposes have been classified as follows by Mr. Bispham:

First. Gifts for eleemosynary purposes, as "to the poor," "to a parish," "for a hospital," "for orphans."[8]

Second. Gifts for educational purposes, as education of poor children, schools, advancement of learning, libraries.[9]

Third. Gifts for religious purposes, as missionary and Bible societies, churches, for foreign missions.[10]

Fourth. Gifts for erecting or maintaining public buildings or works, and lessening the burdens of government.[11]

The subject of the trust must be a gift, and cannot be predicated upon an agreement to devote money to a charitable object.[12]

A peculiar doctrine arises in relation to the judicial powers of equity, concerning the application of a gift for a charitable use, which cannot be applied according to the exact intention of the donor, which is known as the *cy pres* doctrine. In the case of Jackson v. Phillips, the law on the subject was stated to be "that, when a gift is made to trustees for a charitable purpose, the general nature of which is pointed out, and which is lawful and valid at the time of the death of the testator, and no intention is expressed to limit it to a particular institution or mode of application, and afterwards, either by change of circumstances the scheme of the testator becomes impracticable, or by change of law becomes illegal, the fund having once vested in the charity, does not go to the heirs at law as a resulting trust, but is to be applied by the court of chancery, in the exercise of its jurisdiction in equity, as near as possible, to carry out his general charitable intent."[13]

There has been much discussion upon the application of the *cy pres* doctrine by the courts of this country, but all are agreed that they have no power to direct a scheme for the application of the gift when the bequest designed was illegal and thus void, or when it was for an indefinite charitable purpose and no trustees were appointed to carry it out.[14] The doctrine is altogether repudiated in some of the States, and in some, charities are treated as ordinary trusts.

Whenever the intention is shown to have been, that the fund was to be employed in a way pointed out forever, and in no other way, then the application of the doctrine must fail.[15]

As to the uncertainty which will cause the failure of a charitable gift no general rule can be laid down, but if the property conveyed can be applied to other than charitable purposes it is considered too uncertain, and the gift must fail.[16] But if the charitable nature of the trust is imperative, the uncertainty will not avoid it.[17] And it is immaterial how uncertain the beneficiaries or objects are, if the court by a true construction of the instrument has power to appoint trustees to exercise the discretion or power of making the beneficiaries, as certain as the nature of the trust requires them to be.[18]

In the principal case, the alleged uncertainty was a devise to the "board of home and the board of foreign missions," without mentioning what particular board of home or foreign mission was intended. This being, after it was shown that there were several such missions established by different churches, a latent ambiguity,[19] extrinsic evidence was admissible to prove the intention of the testator.[20]

Where property is given in a charitable use, and the income so increases that it is not exhausted by the requirements of a gift, the surplus, provided there is nothing in the will showing an intention that it should go to the heir or next of kin, will also be devoted to some charitable purpose.[21] A charitable use is not subject to the ordinary rules against perpetuity,[22] unless, of course, by statute. So trust for accumulation beyond the common law period are allowed.[23]

W. M. HEZEL.

5 Statute 43 Eliz., ch. 4.

6 Perry on Trusts, § 692.

7 Jackson v. Phillips, 14 Allen, 556.

8 Heuser v. Allen, 42 Ind. 425; Atty.-Gen. v. Old South Society, 13 Allen, 474; McDonald v. Massachusetts Hospital, 120 Mass. 432; Vidal v. Girard's Exrs., 2 How. 128.

9 Heuser v. Allen, 42 Ind. 425; Fuller v. Plainfield Academy, 6 Conn. 544; Stevens v. Shippen, 28 N. J. Eq. 487; Gerker v. Purcell, 25 Ohio St. 229; Donohugh's Appeal, 5 Norris, 306.

10 19 Ala. 814; Grissom v. Hill, 17 Ark. 483; Fairbanks v. Lawson, 99 Mass. 533.

11 Jackson v. Phillips, 14 Allen, 550. For a large list of cases under these heads, see Bispham on Eq. 168-170, and Perry on Trusts, §§ 698-705.

12 Swift v. Beneficial Society, 73 Pa. St. 362.

13 Jackson v. Phillips, 14 Allen, 580; Rhode Island Hospital Trust Co. v. Olney, 14 R. I. 449.

14 Perry on Trusts, § 731; Bispham on Eq. § 128.

15 Atty.-Gen. v. Troumonger's Co., 2 Myl. & K. 476.

16 Morice v. Durham, 9 Ves. 404; Rotch v. Emerson, 105 Mass. 431.

17 Saltonstall v. Sanders, 11 Allen, 462.

18 Perry on Trusts, § 732; McLain v. School Directors, 51 Pa. St. 196; Miller v. Atkinson, 63 N. C. 537; Story's Eq. Jur. § 1169; Williams v. Pearson, 38 Ala. 299; Birchard v. Scott, 39 Conn. 63; Newson v. Starke, 46 Ga. 88.

19 Patch v. White, 117 U. S. 217; Best on Ev. 232, *n.*

20 Hinchley v. Thatcher, 139 Mass. 485; American Tract Society v. DeWitt, 9 Allen, 447; Tilton v. American Bible Society, 60 N. H. 377; Button v. American Tract Society, 23 Vt. 336; Durham v. Averill, 45 Conn. 61; Howard v. American Peace Society, 49 Me. 288; Brewster v. McCall, 15 Conn. 274; Best on Ev. 232, *n.*

21 Perry on Trusts, § 735; Bispham on Eq. § 132; Thetford School Case, 8 Reporter, 130; 2 Redfield on Wills, 796.

22 Perin v. Carey, 24 How. 495.

23 Philadelphia v. Girard's Heirs, 9 Wright 9; Odell v. Odell, 10 Allen, 1.

WEEKLY DIGEST

Of ALL the Current Opinions of all the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States.

1. ACCORD AND SATISFACTION—Laches.——One holding a judgment and accepting a note of another person, agreed to dismiss the suit, which was done. He could not be permitted to re-instate the judgment, because the note was for a less amount than the judgment. The acceptance of the note was an accord and satisfaction, and a delay of six months in such a matter is fatal. *Hardesty v. Graham*, Ky. Ct. App., April 14, 1887; 3 S. W. Rep. 409.

2. ACTION—Check—Protest.——A loan of a check to one who uses it as money is a loan of money, and the maker, after it is protested, may sue for the amount of it, though he has not yet paid it.—*Hilliard v. Bothell*, S. C. N. H., March 11, 1887; 8 Atl. Rep. 826.

3. ACTION—County—Mistake—Equity — Rescission.—— A statute declaring that counties shall no longer be corporations, or sued as such, does not apply to actions already begun. Where a deed is founded on a mutual mistake, it may be set aside and the contract rescinded. Where the deed was made under the impression that a county-seat was to be removed to a certain place, and it was not, that is such a mistake as will authorize a rescission.—*Griffith v. Sebastian Co.*, S. C. Ark., April 2, 1887; 3 S. W. Rep. 886.

4. ACTION—Intervention—Poor-farm—Sale.——In an action by tax-payers to set aside the sale of the county poor-farm, the county may intervene and set up that the sale was legal.—*McConnell v. Hutchinson*, S. C. Iowa, March 18, 1887; 32 N. W. Rep. 481.

5. ADMIRALTY—Charter Party — Jurisdiction.—— An action *in rem* cannot be maintained for the breach of a charter party, when the freight was not delivered on board nor the voyage begun.—*The Missouri*, U. S. D. C. (N. Y.), April 1, 1887; 30 Fed. Rep. 384.

6. ADMIRALTY — Practice — Evidence. —— Under 21 Stat. at Large, 322, the government must prove that the master or owner of the ship was a consenting party to the violation of the law.—*United States v. The Snow Drop*, U. S. C. C. (Miss.), January, 1887; 30 Fed. Rep. 79.

7. AGENCY—Telegraph — Ratification. —— Part payment of an amount due on a contract, made by telegraph, is an acknowledgment of liability and of the agency of the telegraph company in transmitting the messages.—*Culver v. Warren*, S. C. Kan. April 8, 1887; 13 Pac. Rep. 577.

8. ALIENS—Naturalization— Intention. —— An alien, who has resided here five years, of which the last three were the last years of his minority, may be admitted to citizenship without having made the preliminary declaration of intention.—*Schultz's Petition*, S. C. N. H., March 11, 1887; 8 Atl. Rep. 827.

9. ALTERATION—Of Instrument.——The alteration of a negotiable instrument, increasing the amount for which it is made, renders the instrument void in the hands of a *bona fide* holder for value, if the alteration is so made as to leave no mark or indication that it had been tampered with.—*Fordyce v. Kosminski*, S. C. Ark., April 2, 1887; 3 S. W. Rep. 892.

10. APPEAL—Assignment of Errors—Agreement.—— An agreement, allowing time to appellant to file his brief, does not relieve him from the duty of assigning errors in the time required.—*Lamy v. Lamy*, S. C. N. Mex., Feb. 2, 1887; 13 Pac. Rep. 178.

11. APPEAL — Breach of Marriage Promise—Waiver. ——Upon appeal the court cannot review the ruling of the trial court refusing to permit a witness to answer a question, unless it appears that the expected answer would be material. The return of an engagement ring is not a waiver of a right to sue for breach of marriage promise.—*Kraxberger v. Roiter*, S. C. Mo., March 21, 1887; 3 S. W. Rep. 872.

12. APPEAL—Damages—Executors.——Where an executor takes an appeal in good faith from a decree construing the will, the affirmance of the decree should not carry damages, under the Kentucky statutes.—*Shuck v. McElroy*, Ky. Ct. App., March 19, 1887; 3 S. W. Rep. 906.

13. APPEAL — Death — Substitution.—— A motion to dismiss an appeal, when it appears the appellee was dead before the judgment was rendered, will not be considered until his personal representatives have been substituted for him in the appellate court.—*Lyons v. Roach*, S. C. Cal., Feb. 21, 1887; 13 Pac. Rep. 151.

14. APPEAL—Demurrer to Evidence—Remanding—Insurance.——When a demurrer to evidence is overruled the court cannot assess the damages. If it does, the appellate court upon sustaining the ruling should remand the case, ordering the assessment of damages by a jury. If an insurance policy provides for the payment of the actual cash value of the property, that value must be proved or the plaintiff's damages will be nominal.—*Hanover, etc. Co. v. Lewis*, S. C. Fla., March 23, 1887; 1 South. Rep. 863.

15. APPEAL—Dismissal—Second Appeal.——Where an appeal is taken, but is not brought up in time, and i

filed after return day and dismissed, a second appeal cannot be brought up under another order.—*World's Exposition v. Cresent C. R. Co.*, S. C. La., March 21, 1887; 1 South. Rep. 791.

16. APPEAL—Final Order.——The report of a referee appointed by the special term, having been confirmed at special term, and that adjudication reversed at general term, and a new hearing ordered before another referee appointed by the special term, such order is not a final order and is not appealable to the court of appeals.—*Mutual Life Ins. Co. v. Anthony*, N. Y. Ct. App., March 8, 1887; 11 N. E. Rep. 281.

17. APPEAL — Harmless Error — Attorney — Presumption.——In Missouri, the supreme court cannot on appeal reverse a judgment unless material error was committed against the appellant. If an error does not affect the merits of the action it is harmless. It is always presumed that an attorney at law correctly represents his client. The contrary must be affirmatively made to appear.—*Valle v. Picton*, S. C. Mo., Feb. 28, 1887; 3 S. W. Rep. 860.

18. APPEAL—Harmless Error—Examination of Witness.——Where an objection to a question asked on cross-examination is sustained, and the party has opportunity to call the witness and ask the question on examination in chief, such exclusion will be considered harmless error.—*Bonnett v. Glatfeldt*, S. C. Ill., March 23, 1887; 11 N. E. Rep. 250.

19. APPEAL—Harmless Error—Executor.——If in the trial court an error is committed, which before appeal is cured by a *remittitur*, it is harmless. A judgment rendered against an executor, in an action which was pending when the testator died, stands upon the same footing as other claims, although it was rendered for the balance unpaid of a mortgage debt.—*Ranig v. Hartman*, S. C. Wis., April 12, 1887; 32 N. W. 639.

20. APPEAL — Judgment — No Finding.——Where the defendant pleads the statute of limitations, and it does not appear that the court passed thereon, and there is no bill of exceptions showing that, under the evidence, the case must have gone against the defendant, on appeal by the defendant the judgment must be reversed.—*Spreckels v. Ord*, S. C. Cal., Feb. 22, 1887; 13 Pac. Rep. 158.

21. APPEAL—Jurisdiction.——The Supreme Court of Louisiana has no jurisdiction upon appeal of a case, in which a fine of $300 was actually imposed for selling liquors without license.—*State v. Smith*, S. C. La., March 7, 1887; 1 South. Rep. 867.

22. APPEAL—Justice Court.——An appeal from the judgment of a justice must, in Arkansas, be taken within thirty days after the rendition of the judgment. The pendency of a motion for a new trial does not enlarge the time limited.—*Scott v. Meyer*, S. C. Ark., April 2, 1887; 3 S. W. Rep. 883.

23. APPEAL—Motion for Increase of Judgment.——A motion to dismiss an appeal for formal irregularities, is waived where an appellee files an answer to the appeal. *Jacob v. Yale*, S. C. La., March 21, 1887; 1 South. Rep. 822.

24. APPEAL—Notice—Admiralty.——A notice of appeal in admiralty, given more than two months after the decree and more than forty days after the time given therefor, is ineffectual.—*United States v. Lone Fisherman*, S. C. Wash. Ter., Feb. 1, 1887; 13 Pac. Rep. 617.

25. APPEAL—Pleadings—Theory of Case.——If a case is tried upon the theory that the answer denies the allegations of the complaint, the objection that some of the allegations are improperly denied, cannot be raised first in the appellate court.—*Tolouse v. Burkett*, S. C. Idaho, Feb. 14, 1887; 13 Pac. Rep. 172.

26. APPEAL — Remittitur.—— A remittitur entered after verdict by jury rendered, in a case in which the sum demanded exceeds $2000, does not cut off defendant's right of appeal from a judgment rendered against him.—*Gayders v. L., N. O. & T. R. Co.*, S. C. La., March 7, 1887; 1 South. Rep. 792.

27. APPEAL—Statement—Fraud.—— Where the trial judge refuses to settle a statement of the case, on the ground that it is not correct and is fraudulent, the order of the judge will not be received on appeal, when there is nothing to show that the statement is not fraudulent.—*Hearst v. Dennison*, S. C. Cal., April 20, 1887; 13 Pac. Rep. 628.

28. APPEAL—Sureties — Stipulation.——A stipulation to extend the time for the justification by the sureties on the appeal bond, is not a waiver of any of the requirements to perfect the appeal.—*Wittram v. Commelin*, S. C. Cal., Feb. 22, 1887; 13 Pac. Rep. 160.

29. APPEAL — Transcript — Damages.—— In New Mexico, when, in an action of contract, the appellant fails to file the transcript, but the appellee does so, the judgment will be affirmed with ten per cent. damages, if it appears from the transcript that the appellant has no defense.—*Shafer v. Second Nat. Bank*, S. C. N. Mex., Feb. 2, 1887; 13 Pac. Rep. 179.

30. APPEARANCE — Corporation —Removal of Causes.——A general appearance and a demurrer precludes a defendant from objecting to the service of the process. And after a party has removed a cause to a federal court he cannot object that the service of process was not in the proper federal district. Rulings on Wisconsin law as to service of process on corporations.—*Friezen v. Allemance, etc. Co.*, U. S. C. C. (Wis.), May 13, 1886; 30 Fed. Rep. 349.

31. ARBITRATION—Oath—Partnership.——An award is good if the parties, expressly or by implication, waive the swearing of the arbitrators and witnesses. An award of the accounts of partners is sufficiently definite although it does not state any sum to be paid, but declares that the plaintiff is not to be charged with any part of the losses, and that the accounts are to stand as they stood at the time of the award.—*Cochran v. Bartle*, S. C. Mo., March 21, 1887; 3 S. W. Rep. 854.

32. ASSIGNMENT—Equitable.——An agreement to pay a collector a certain part of a sum for collecting it is not an equitable assignment, and gives the collector no right of action against the debtor.—*Plater v. Meag*, U. S. C. C. (Penn.), March 22, 1887; 30 Fed. Rep. 308.

33. ASSIGNMENT — Fraudulent Intent.—— An assignment for the benefit of creditors in conformity with the law is valid, though the assignor has a fraudulent intent, provided the assignee is not implicated therein.—*Ferrall v. Farnan*, Md. Ct. App., March 16, 1887; 8 Atl. Rep. 819.

34. ASSIGNMENT—Patents—Limitations—Collateral Attack—County.——Patents may be assigned and the assignee of a patent may sue in his own name. Rights of action for infringment survive to personal representatives. State statutes of limitation do not apply to actions for infringement. Counties are liable for infringement of patents. When the proper court has ratified a sale of a patent, the sale is not open to collateral attack.—*May v. Board, etc. Logan County*, U. S. C. C. (Ohio), March 22, 1887; 30 Fed. Rep. 250.

35. ATTACHMENT—Affidavit—Notary Public.——In attachment proceedings, it is sufficient if the affidavit is made by the plaintiff's agent in the New Mexican form before a notary, without disclosing the plaintiff's name or stating that the affiant is his agent.—*Robinson v. Hesser*, S. C. N. Mex., Jan. 31, 1887; 13 Pac. Rep. 204.

36. ATTACHMENT—Real Estate.——Under the Code of Virginia, ch. 148, §§ 7, 9, the return of an attachment in equity is insufficient to create a valid lien on real estate if it only states that he served "the summons on —— by delivering him a copy," and that he resided on the premises within described.—*Robertson v. Hoge*, S. C. App. Va., April 14, 1887; 1 S. E. Rep. 667.

37. ATTORNEY—Disbarment—New Trial.——When an attorney is disbarred by the supreme court, a motion for a new trial is not the proper remedy.—*In re Tyler*, S. C. Cal., Feb. 6, 1887; 13 Pac. Rep. 169.

38. BANKRUPTCY—Composition—Breach—Jurisdiction. A composition in bankruptcy is no defense to a suit on the original debt after a breach of the bankrupt of its

conditions, and the jurisdiction of the United States courts is not exclusive, in case proceedings are terminated by composition beyond the time allowed the bankrupt to carry out the composition.—*Pubke v. Churchill*, S. C. Mo., Feb. 28, 1887; 3 S. W. Rep. 829.

39. BANKS—Receiver—Director.——The receiver of a national bank can enforce against the directors any rights growing out of their defaults that the bank could have done. A president, absent on sick leave when losses occur, is not liable for them. When directors are liable for discounting notes imperfectly secured.—*Movius v. Lee*, U. S. C. C. (N. Y.), March 23, 1887; 30 Fed. Rep. 296.

40. BILLS AND NOTES — Bona Fide Holder — Debt — Surety.——One who takes negotiable paper before maturity, without notice of any defect in title in payment of an antecedent debt, is a purchaser for value. A surety upon a note, signed by him as such, if the maker negotiates it without obtaining another surety thereon, though he promised so to do is liable.—*Tabor v. Merchants' Nat. Bank*, S. C. Ark., March 12, 1887; 3 S. W. Rep. 805.

41. BILLS AND NOTES—Consideration — Bankruptcy — Parol Agreement.——The moral obligation is sufficient to support the promise to pay a debt after a discharge therefrom in bankruptcy. A parol agreement about the payment of a promissory note, made at the time of its execution, is not admissible against an assignee thereof. —*Wislizenus v. O'Fallon*, S. C. Mo., Feb. 28, 1887; 3 S. W. Rep. 837.

42. BILLS AND NOTES — Deceased Indorser. —— A promissory note, executed and made payable in Indiana, is not provable before maturity, as a claim in Illinois, against the estate of a deceased indorser, who had waived notice and protest, where it is shown that in Indiana an indorser is only liable in the event of failure on the part of the maker to pay at maturity and on due notice of non-payment.—*Dunnigan v. Stevens*, S. C. Ill., March 23, 1887; 11 N. E. Rep. 254.

43. BILLS AND NOTES—Maker—Designation —Liability. ——When a promissory note is signed with the designation of "Trustees Omega Lodge" after the names of the makers, they are personally liable thereon.—*Coburn v. Omega Lodge*, S. C. Iowa, March 21, 1887; 32 N. W. Rep. 513.

44. BOND—Official Bond—Account.——An officer and his sureties on his official bond are liable if he fails to pay or account at the close of his term. He cannot transfer the liability from one set of sureties to another by merely charging himself on the account of the new lease of office with the deficit of the old.—*State v. Churchill*, S. C. Ark., March 26, 1887; 3 S. W. Rep. 880.

45. BOND—Official Bond—Action—Parties.——To sustain a suit on an official bond for the failure of the officer to pay over money to his successor, it is necessary to show that the defendant's term has expired. Such a suit against a school trustee may well be brought upon the relation of his successor.—*Hiatt v. State ex rel.*, S. C. Ind., April 23, 1887; 11 N. E. Rep. 359.

46. CARRIERS — Delay — Damages. —— The damages against a carrier for not delivering goods in a reasonable time, is the difference in their value when they were delivered and when they should have been delivered, with interest, less freight unpaid. If the party had sold them in advance, and the carrier knew it, then he is bound for the loss sustained, if the sale is annulled.—*St. Louis, etc. Co. v. Mudford*, S. C. Ark., March 19, 1887; 3 S. W. Rep. 814.

47. CARRIERS—Landing.——It is the duty of a carrier to land his passengers in the usual and safe way. Ruling on the impossibility of landing.—*Post v. Koch*, U. S. D. C. (N. Y.), Dec. 14, 1886; 30 Fed. Rep. 208.

48. CHAMPERTY—Rescission—Ejectment.—— In Kentucky, a sale of land, adversely held by another, is champertous and void. One who has sold land so held, must rescind the sale before an action can be maintained to recover the land.—*Lucer v. Wilson*, Ky. Ct. App., April 16, 1887; 3 S. W. Rep. 911.

49. COLLISION.——A sailing vessel has a right to presume that a steamer will keep out of her way, and is not bound to take any special measures to avoid a collision. —*Fenton v. The Renovator*, U. S. D. C. (N. Y.), Jan. 29, 1887; 30 Fed. Rep. 194.

50. COLLISION—Sailing Vessels.——The relative duties of vessels close-hauled and vessels sailing free, defined and declared.—*Haskell v. The Ella Warner*, U. S. D. C. (N. Y.), Oct. 4, 1886; 30 Fed. Rep. 203.

51. COLLISION—Signals —— The relative duties of overtaking and overtaken vessels declared. Signals should be given.—*Coffin v. The Osceola*, U. S. D. C. (N. Y.), March 14, 1887, 30 Fed. Rep. 383.

52. COLLISION—Steamer and Tug—Custom.——*Held*, and the facts stated in the opinion to have been the duty of the steamer to have kept to the east, so as to have left the western passage clear for the tug and the vessels she had in tow.—*Bloomer v. The Thomas P. Way*, U. S. D. C. (N. Y.), Dec. 3, 1886; 30 Fed. Rep. 207.

53. CONSTITUTIONAL LAW—Exemption from Taxation. ——In Michigan, the legislature is authorized by the constitution to exempt from taxation swamp land given in aid of railroads. Courts should not inquire into the consideration which induces the legislature to create exemption from taxation.—*Board, etc. v. Auditor-General*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 651.

54. CONSTITUTIONAL LAW—Obligations of Contracts—Insurance—Insolvency.——The law of Missouri, requiring non-resident claimants against insolvent insurance companies to deduct from their claims all moneys deposited in the State of the claimants to secure policy holders, before they assert a claim in Missouri, does not impair the obligation of contracts made before the law was passed.—*Bockover v. Supt. Ins. Dept.*, S. C. Mo., Feb. 28, 1887; 3 S. W. Rep. 853.

55. CONSTITUTIONAL LAW—Office—Officer—Statute.—— The act of Missouri, allowing county treasurers to hold over after their successors are appointed (Sess. acts 1885, p. 108), is unconstitutional.—*State ex rel. v McGovney*, S. C. Mo., March 21, 1887; 3 S. W. Rep. 867.

56. CONSTITUTIONAL LAW — Oleomargarine.—— Laws N. Y. 1855, ch. 183, § 7, forbidding the manufacture or sale of products not made from unadulterated milk, in imitation or semblance, or designed to take the place of butter, *held*, constitutional.—*People v. Arensberg*, N. Y. Ct. App., March 22, 1887; 11 N. E. Rep. 277.

57. CONSTITUTIONAL LAW — Street Improvements — Assessments.——A municipal ordinance requiring the cost of improving a street or sidewalk to be assessed upon the real estate abutting thereon, in proportion to the frontage, is not obnoxious to Const. Illinois, 1870, art. 9, § 1.—*City of Springfield v. Greene*, S. C. Ill., March 23, 1887; 11 N. E. Rep. 261.

58. CONTEMPT—Injunction—Review.——The appellate court will not consider whether the trial court, in dismissing an application for punishment for contempt of an injunction, misconstrued its own judgment in an application for a mandate to review such action.—*Heilbron v. Superior Court*, S. C. Cal., Feb. 22, 1887; 13 Pac. Rep. 160.

59. CONTRACT—Conditions—Recovery.——A assigned to B an interest in a mine for so much cash and $1,250 when the mine produced so much quicksilver. *Held*, that A could not recover the $1,250, without proving that B had not used due diligence in working the mine, considering also the outlay attending it and the prospects in its development.—*Ray v. Hodge*, S. C. Oreg., March 29, 1887; 13 Pac. Rep. 599.

60. CONTRACT — Dependent Stipulations.—— Where one party agrees to do certain things in a certain time if another party does a certain thing in a specified time, if the latter fails to accomplish his promise in the specified time, the first is only bound to use reasonable diligence.——*Starr v. Gregory C. M. Co.*, S. C. Mon., Jan. 28, 1887; 13 Pac. Rep. 195.

61. CONTRACT—Drunkard—Laches.——A drunkard is competent to make a contract. To avoid his contract it must be shown that when he made it he was so drunk

that his reason was dethroned. Twenty years is too long a period for one who is a drunkard, spendthrift and feeble minded, to wait before bringing suit for property out of which he alleges he has been defrauded. —*Wright v. Fisher*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 605.

62. CONTRACT—Privity.——One may be bound by a contract between other parties, although he did not sign the memorandum and was not mentioned as a party to it. A written contract which, clumsily expresses all the terms arranged between negotiating parties, is to be regarded as a complete contract and not an agreement to agree.—*Bean v. Clark*, U. S. C. C. (N. Y.), March 12, 1887; 30 Fed. Rep. 225.

63. CORPORATIONS—Agents—Torts — Exemplary Damages. ——Corporations are liable for the torts of its agents done in the line of their employment and in execution of authority conferred, though the act was not directly authorized nor ratified, and exemplary damages may be recovered as in the case of natural persons. —*Wheeler & W. M. Co. v. Boyce*, S. C. Kan., April 8, 1887; 13 Pac. Rep. 609.

64. CORPORATIONS — Directors — Fraud — Suit.—— A stockholder may sue, on behalf of the corporation, its directors for breach of trust, joining the corporation as a party.—*Beach v. Cooper*, S. C. Cal., Feb. 22, 1887; 13 Pac. Rep. 161.

65. COUNTIES—County-seat Election—Petition—Judgment.——The decision of the county commissioners, that the petition for a county-seat election is not signed by the proper number of voters is conclusive, unless reversed or modified in the mode provided by law.—*State v. Nelson*, S. C. Neb., April 6, 1887; 32 N. W. Rep. 589.

66. COURTS — Criminal Jurisdiction — Kentucky.—— Kentucky circuit courts can only be deprived of their original jurisdiction in criminal cases by direct legislation, and when that is repealed the jurisdiction is revived.—*Stapleton v. Com.*, Ky. Ct. App., March 10, 1887; 3 S. W. Rep. 798.

67. CREDITOR'S BILL—Judgment—Lien.——A court of equity will not aid a creditor to set aside a fraudulent conveyance, when he has not reduced his claim to a judgment and has no lien on the land.—*Thompson v. Caton*, S. C. Wash. Ter., Jan. 13, 1887; 13 Pac. Rep. 185.

68. CRIMINAL LAW — Confessions—Admissibility.—— To render confessions inadmissible on account of promises made, the promise must be positive, must be such as would be likely to influence the accused to speak untruthfully, and must be made or sanctioned by some one in authority.—*Rice v. State*, Tex. Ct. App., Jan. 12, 1887; 3 S. W. Rep. 791.

69. CRIMINAL LAW — Embezzlement—Intent.——If at the time the bailee sells the property he has the intent to appropriate the proceeds to his own use, it is immaterial whether he had authority to sell.—*Epperson v. State*, Tex. Ct. App., Jan. 26, 1887; 3 S. W. Rep. 789.

70. CRIMINAL LAW — Indictment — Breaking Into Car. ——An indictment charging one with breaking and entering a car must be held, under Wisconsin law, to charge the act as done in the day-time.—*Nichols v. State*, S. C. Wis., March 22, 1887; 32 N. W. Rep. 543.

71. CRIMINAL LAW—Instruction—Omission.——Where a party fails to ask an instruction upon a particular point, he cannot complain that the court did not give such an instruction on its own motion.—*People v. Marks*, S. C. Cal., Feb. 17, 1887; 13 Pac. Rep. 149.

72. CRIMINAL LAW—Juror —Competency—Opinion.—— A juror, who has formed an opinion respecting the guilt of the accused, but says opinion will not prevent him from rendering a true verdict according to the evidence, is not incompetent, under the Iowa code.—*State v. Vatter*, S. C. Iowa, March 19, 1887; 32 N. W. Rep. 506.

73. CRIMINAL LAW — Practice — Evidence of Other Offenses.——In a trial of several persons on an indictment charging some as principals, others as accessories, evidence is admissible as against two of the parties to show that, at the time of the alleged crime, they were under indictment for other crimes, in order to show a motive for the commission of the crime for which they are on trial, and this may be done without first showing a conspiracy between the parties.—*State v. Travis*, S. C. La., March 21, 1887; 1 South. Rep. 817.

74. CRIMINAL LAW — Sentence — Recommendation to Mercy.——When in a murder case the jury render a verdict of murder in the second degree and recommend the prisoner to the mercy of the court, which sentences him to imprisonment for life, the appellate court cannot interfere.—*People v. Huff*, S. C. Cal., Feb. 25, 1887; 13 Pac. Rep. 168.

75. CRIMINAL LAW—Witness—Cross-examination.—— The error of the court in not allowing a proper cross-examination in a criminal case is not cured by the failure of the party to make the witness his own.—*Territory v. Rehberg*, S. C. Mon., Jan. 25, 1887; 13 Pac. Rep. 132.

76. CRIMINAL PRACTICE —Continuance—Instructions—Separation of Jury.——A continuance will not be granted on account of the absence of a witness who does not reside in the State. If instructions as a whole correctly announce the law, a conviction will not be set aside because the instructions for the prosecution do not recognize a defense embodied in instructions given at the instance of the defendant. The separation of the jury upon occasions of necessity will not avoid a verdict.—*Skates v. State*, S. C. Miss., April 18, 1887; 1 South. Rep. 843.

77. CUSTOMS DUTIES.——The act of congress of June 22, 1874, concerning forfeiture of smuggled goods, is not to be construed as applying to a *bona fide* purchaser without knowledge of the illicit character of the goods. —*United States v. Certain Diamonds*, U. S. D. C. (Ill.), March 14, 1887; 30 Fed. Rep. 364.

78. CUSTOMS DUTIES. —— When goods are re-appraised the importer may be present. The duty of reappraisers regulated by U. S. Rev. Stat. § 2902. Ruling as to merchant appraiser.—*Aufmordt v. Hedden*, U. S. C. C. (N. Y.), Dec. 10, 1886; 30 Fed. Rep. 360.

79. DAMAGES—Executory Contract—Profits.——When the party notifies another that he will not take the goods to be prepared under contract, the other is entitled to the profit he would have made less the profits made by sales to other parties.—*Hinckley v. Pittsburg, etc. Co.*, U. S. S. C., April 18, 1887; 7 S. C. Rep. 875.

80. DEED — Corporation — Execution.——Under Wisconsin law, a deed by corporation must be signed by the president, countersigned by the secretary and sealed. A deed imperfectly executed, although ratified by the corporation, does not debar an execution creditor from pursuing his remedy.—*Galloway v. Hamilton*, S. C. Wis., April 12, 1887; 32 N. W. Rep. 636.

81. DEED — Grantor — Capacity. ——A grantor in a deed must have enough capacity to understand in a reasonable manner the nature and effect of the business he is doing.—*Stewart v. Flint*, S. C. Vt., April 5, 1887; 8 Atl. Rep. 801.

82. DEED — Quitclaim — Taxes—Assessment—Statutes. ——A quitclaim deed does not inure to convey subsequently acquired title. Various rulings as to statutes of Michigan and the charter of the city of Muskegon on the subject of taxes, assessments, apportionment among wards, etc.—*Fay v. Wood*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 614.

83. DEEDS—Registration—Execution Sale.——A purchaser at execution sale, whose certificate of purchase is recorded before a prior deed, though the latter is recorded before his deed, will take the precedence.— *McMurtrie v. Riddell*, S. C. Colo., Feb. 8, 1887; 13 Pac. Rep. 181.

84. DEED—Tenants in Common—Partition—Evidence. ——A deed conveying land to "the estate of H ——," is void. Tenants in common may make a parol partition which will be good between them so far as relates to possession, but does not affect the title. The evidence of a deceased witness, embodied in a bill of exceptions taken on a first trial, cannot be received on a

second trial.—*Simmons v. Spratt*, S. C. Fla., March 24, 1887; 1 South. Rep. 860.

85. DESCENT AND DISTRIBUTION—Non-resident Heir—Practice.——In Louisiana, an action by one heir against others for partition of land, is so far a proceeding *in rem* as to authorize the appointment of a curator *ad hoc* to represent a non-resident heir.—*Wuntzel v. Landry*, S. C. La., March 21, 1887; 1 South. Rep. 893.

86. DESCENT AND DISTRIBUTION—Will.——Under Illinois law (Rev. Stat. ch. 39 § 10), the birth of a child after a will was made does not revoke the will, except as to that child who takes the same interest as it would have done if the father had died intestate, unless it clearly appears to have been his intention to disinherit such child.—*Ward v. Ward*, S. C. Ill., March 23, 1887; 11 N. E. Rep. 336.

87. DIVORCE—Removal of Causes—Fraud—Limitations.——An action to annul a decree for divorce is not removable to a federal court. A divorce fraudulently obtained by publication may be set aside, if the fraud in keeping the wife in ignorance of the proceedings be established, and the statute of limitations will not bar such an action.—*Caswell v. Caswell*, S. C. Ill., March 23, 1887; 11 N. E. Rep. 342.

88. DOWER—Devise—Abandonment.——A devise to a wife is not to be considered as in lieu of the homestead right, under Missouri law. When a widow marries again and moves to the home of her second husband and remains there four years with no special intention of returning, she cannot afterwards claim a homestead.—*Kaes v. Gross*, S. C. Mo., Feb. 28, 1887; 3 S. W. Rep. 840.

89. DOWER—Fraudulent Conveyance—Sale.——When a conveyance to a wife is set aside as fraudulent against the creditors of the husband, who dies pending the suit, the wife can only claim dower in case there is a surplus arising from the sale under the decree.—*Hopkins v. Bryant*, S. C. Tenn., Jan. 21, 1887; 3 S. W. Rep. 827.

90. DOWER — Jointure — Election—Devise in Lieu—Estoppel—Statute.——In Missouri, by statute, a conveyance by way of jointure of lands puts a wife to an election between the land so conveyed and her dower, but an unconditional conveyance of land does not put her to an election. If no land is devised but personalty is bequeathed, she can accept the legacy and claim her dower also. A widow is not estopped by her declaration to an intending purchaser that the title to the land was absolute, she being under the impression that her right to dower was barred.—*Martien v. Norris*, S. C. Mo., March 21, 1887; 3 S. W. Rep. 849.

91. DRAINAGE — Assessments for Deficiency.——Under the Illinois drainage act of June 27, 1885, the commissioners may make additional assessment if the first proves insufficient, but the aggregate amount cannot be allowed to exceed the benefits to the land assessed.—*Commissioners v. Kelsey*, S. C. Ill., March 23, 1887; 11 N. E. Rep. 256.

92. EJECTMENT — Fraudulent Conveyances — Admissions.——When, in ejectment, the plaintiff relies on a sheriff's deed and the defendant on a prior deed, plaintiff may prove declarations of the defendant and his grantor, who the judgment debtor of the plaintiff, that defendant's deed was in fraud of the plaintiff's rights.—*Cope v. Kidney*, S. C. Penn., March 28, 1877; 8 Atl. Rep. 836.

93. EJECTMENT — Public Domain — Possession.——In New Mexico, an action of ejectment will lie in favor of one who has inclosed part of the public domain withdrawn from settlement against one who has expelled him therefrom by threats, having no better title, after a proper demand for the restoration of possession has been made.—*New Mexico, etc. R. Co. v. Crouch*, S. C. N. Mex., Feb. 3, 1887; 13 Pac. Rep. 201.

94. EJECTMENT—Title—Adverse Possession.——When, in an action of ejectment, neither party shows a paper-title, a judgment is warranted for the plaintiff, who shows he fenced it all in, except toward his own land, and occupied it the statutory time, and until ousted by the defendant.—*Foot v. Murphy*, S. C. Cal., Feb. 23, 1887; 13 Pac. Rep. 163.

95. EMINENT DOMAIN—Condemnation—Consolidation—Collateral Inquiry.——When a railroad is authorized to condemn property, in such a proceeding, when it is shown that the corporate franchises are being exercised, the question whether its consolidation with other roads is valid will not be considered.—*In re Minneapolis & St. L. R. Co.*, S. C. Minn., April 13, 1887; 32 N. W. Rep. 556.

96. EMINENT DOMAIN—Condemnation—Damages.——In condemnation of land for a railroad, the owner is allowed all the damages he may sustain by the construction and operation of the road. Subsequent damage to a water-power by the completion of a railroad bridge in a common and proper way, cannot be recovered in a suit.—*Barnes v. Mich. Air-line R. Co.*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 426.

97. EMINENT DOMAIN — Highways — Report.——The proceedings to open a highway in Missouri are void, if the commissioners do not qualify or make their report before the first day of the term of the county court, or do not describe the land taken in their report.—*Rose v. Garrett*, S. C. Mo., Feb. 28, 1887; 3 S. W. Rep. 828.

98. EQUITY — Answer — Witness — Corroborating Circumstances.——Diaries, loosely and imperfectly kept, checks and loose memoranda are not sufficient as corroborating circumstances with one witness to overcome an answer in equity.—*Appeal of Baugher*, S. C. Penn., April 4, 1887; 8 Atl. Rep. 838.

99. EQUITY—Deeds of Trust—Parties—Multifariousness.——A suit by a *cestui que trust* in five deeds of trust, to foreclose the equity of redemption in which all the trustees and a number of lienors and judgment creditors are made defendants, is not multifarious.—*Grant v. Phœnix, etc. Ins. Co.*, U. S. S. C., April 4, 1887; 7 S. C. Rep. 841.

100. EQUITY—Fraud—Deed—Setting Aside.——A conveyance by an aged man and his wife to an adopted son, in consideration of his caring from them during life, will not be considered fraudulent, nor set aside at the instance of the wife after the death of the husband, in the absence of proof of fraud or of undue influence.—*Gardner v. Lightfoot*, S. C. Iowa, March 21, 1887; 32 N. W. Rep. 510.

101. EQUITY—Judgment—Fraud—Setting Aside.——A court of equity cannot set aside a judgment procured by fraud, whether the court granting it is above or below it, but it must clearly appear that the judgment was obtained only through the fraud.—*Dunger v. Receiver of Erie Ry.*, N. J. Ct. Ch., April 26, 1887; 8 Atl. Rep. 811.

102. EQUITY—Jurisdiction—Executors—Partition.——A court of chancery will not correct errors in the administration of estates, unless fraud intervenes or irregularities so gross as to make an inference of fraud, nor then till the estate is settled, or the probate court cannot grant relief. If it has jurisdiction on other grounds it may grant partition. Where the executor allows the real estate to be sold and buys it in himself, equity will interfere.—*Hankins v. Layne*, S. C. Ark., March 26, 1887; 3 S. W. Rep. 821.

103. EQUITY—Mistake — Reformation.——Where, by mistake of the receiver, a difference of $1,200 is omitted in an exchange of lands, which one party was to pay the other, equity will remedy it and enforce the contract.—*Hallam v. Collett*, S. C. Iowa, March 16, 1887; 32 N. W. Rep. 449.

104. EQUITY — Specific Performance — Fraud.——A agreed to sell certain lands to B, which he showed him, but in the deed omitted purposely a part therefrom, while B, not knowing the boundaries, accepted the deed and went into possession. *Held*, that B could compel A to convey to him the whole lot.—*Winans v. Huyck*, S. C. Iowa, March 16, 1887; 32 N. W. Rep. 422.

105. EQUITY—Specific Performance—Parol Contract—Tax-sale.——A parol agreement to purchase lands at a tax-sale and to convey them to the owner on being re-imbursed, is not enforceable in equity in Iowa.—*Hain v. Robinson*, S. C. Iowa, March 16, 1887; 32 N. W. Rep. 417

106. ESTOPPEL—By Judgment—"Burnt Records Act." ——Under section 10 of Illinois, "burnt records act," a decree finding that all the parties are properly before the court, that the court has jurisdiction of the parties and the subject-matter, and that the title is in one of the defendants, is binding on all the parties in the cause.—*Bradish v. Grant*, S. C. Ill., March 16, 1887; 11 N E. Rep. 258.

107. ESTOPPEL—Municipal Claim — Satisfaction. —— When a party buys property, on which he knew there had been a municipal claim, but the claim had been satisfied of record, the municipality is estopped from removing the satisfaction of the claim.—*City of Philadelphia v. Matchett*, S. C. Penn., April 11, 1887; 8 Atl. Rep. 854.

108. EVIDENCE — Expert Testimony — Writings.——A county auditor, a teacher of penmanship, and attorneys, who claim to be familiar with papers and writings, may testify that a writing can be thirty years old, and this is a matter for expert testimony.—*Dill v. Schoeneman*, S. C. Iowa, March 16, 1887; 32 N. W. Rep. 420.

109. EVIDENCE — Preponderance. —— An affirmative defense may be established in a civil action by a preponderance of evidence by the testimony of one witness against that of two witness.—*Story v. Maclay*, S. C. Mont., Jan. 28, 1887; 13 Pac. Rep. 198.

110. EVIDENCE—Res Gestæ—Railroads.——In an action against a railroad for killing stock, statements of a section foreman relative to the killing, made after the event, are inadmissible.—*Smith v. St. Louis, etc. R. Co.*, S. C. Mo., Feb. 28, 1887; 3 S. W. Rep. 836.

111. EVIDENCE — Stenographer — Former Trial. —— When a party subpœnas a witness, and upon learning he is about to leave the State, enters notice that he will use the stenographer's report of his testimony at a former trial, he can do so.—*Fleming v. Town of Shenandoah*, S. C. Iowa, March 16, 1887; 32 N. W. Rep. 456.

112. EVIDENCE—Writings—Secondary Proof.—— Where a paper, alleged to contain the terms of an agreement, is lost, and there is no evidence that the party withholds or has suppressed the paper, or it was lost through his fault, he may testify as to its contents.—*Davis v. Cochran*, S. C. Iowa, March 14, 1887; 22 N. W. Rep. 445.

113. EXECUTORS—Account—Payment to One Heir.—— A judgment, directing payment by an administrator to an heir, on account of heir's interest in the succession, is erroneous, where, in the same judgment, the credits claimed by such administrator in his account for payments made to other heirs are stricken therefrom and remitted for adjustment to partition.—*In re Estates of Lawe*, S. C. La., March 21, 1887; 1 South. Rep. 830.

114. EXECUTORS—Appointment.——Where two beneficiary heirs contest for the administratorship of the ancestor's succession, a large discretion, in the choice of the administrator, is vested in the judge, and his decision will not be disturbed, unless manifestly wrong.—*Succession of Chaler*, S. C. La., March 21, 1887; 1 South. Rep. 820.

115. EXECUTORS—Assets—Fraud—Equity — Surety. —— The assets in the hands of an executor are trust funds for all interested therein, and creditors can pursue the funds in equity in the hands of those receiving them with knowledge of their fraudulent disposition by the administrator, and a surety, who has been compelled to pay creditors, may be subrogated to their rights.—*Pierce v. Holzer*, S. C. Mich., March 11, 1887; 32 N. W. Rep. 431.

116. EXECUTORS — Compensation. —— An executor, who acts in good faith, performing useful and valuable services, is entitled to compensation therefor, though he may misconstrue the will.—*Miller's Appeal*, S. C. Penn., March 14, 1887; 8 Atl. Rep. 864.

117. EXECUTORS — Contracts of Deceased — Liability. ——As a rule, personal representatives, whether named or not, are liable to the extent of assets received on the contracts of the deceased, whether the breach thereof occurred after or before his death, but this does not apply to contracts calling for personal skill or taste.—*Stumpf's Appeal*, S. C. Penn., April 11, 1887; 8 Atl. Rep. 866.

118. EXECUTORS—Life Estate—Fee.——Executors who deliver an immovable to the usufructuary lose seizin of it, which does not revert to the succession. If the usufruct expires before the functions of the executor cease, it becomes incorporated with the ownership. The legatee of the naked ownership of the land cannot demand delivery from the executors.—*Succession of Piffet*, S. C. La., April 11, 1887; 1 South. Rep. 889.

119. EXECUTORS—Pension.——Under Iowa laws, an administrator is entitled as against the widow to a certificate of deposit issued for pension money.—*Perkins v. Hunkley*, S. C. Iowa, March 18, 1887; 32 N. W. Rep. 469.

120. EXECUTORS—Property not Assets—Replevin.—— An administrator has no right to take property of the widow of the deceased as assets, and may be sued individually for so doing.—*Herd v. Herd*, S. C. Iowa, March 18, 1887; 32 N. W. Rep. 469.

121. FORCIBLE ENTRY AND DETAINER—Tortious Possession.——When defendant erects buildings and puts personal property therein with the knowledge of the plaintiff, who takes possession while the premises are vacant, and the defendant subsequently enters with lease and orders the plaintiff's agent out: *Held*, that the defendant was not guilty of a forcible entry and detainer.—*Brooks v. Warren*, S. C. Utah, Feb. 2, 1887; 13 Pac. Rep. 175.

122. FRAUD—False Representations—Married Woman. ——One who blindly relies upon a false representation, ignoring another by which its falsehood could be exposed, is guilty of such negligence as defeats his remedy. A married woman cannot avoid a mortgage on the ground of false representations to her by her husband, if the mortgagee was not a party to the fraud.—*Pacific, etc. Co. v. Anglin*, S. C. Ala., Feb. 25, 1887; 1 South. Rep. 852.

123. FRAUD—Public Lands.——Where fraud has been perpetrated in obtaining the title to public lands, the United States may have such title vacated by an action for that purpose. Ruling on act of congress granting public lands to the State of Nevada.—*United States v. Williams*, U. S. C. C. (Nev.), Nov. 23, 1886; 30 Fed. Rep. 309.

124. FRAUDS—Statute of—Debt of Another Employee. ——An oral promise of an employer to pay his employee's debt, if the employee should work a certain time, which he was already bound to do, the creditor not agreeing to release his debtor not to give him further time, is within the statute of frauds.—*Willard v. Bosshard*, S. C. Wis., March 22, 1887; 32 N. W. Rep. 538.

125. FRAUDS—Statute of—Good Will.——The sale of the good will of a business will not prevent the seller from engaging in the same business in the same city. A payment in return for a verbal agreement not to engage in a particular business in a particular place for five years renders the contract enforcible.—*Washburne v. Dorsch*, S. C. Wis., March 22, 1887; 32 N. W. Rep. 551.

126. FRAUDS—Statute of—Real Estate—Quarry.——An agreement by A with B, that B shall purchase land at not over a certain sum, if possible, and have it conveyed to A, who would pay for it, and they would then work the quarry together and divide the profits, is not within the statute of frauds.—*Treat v. Hiles*, S. C. Wis., March 1, 1887; 32 N. W. Rep. 517.

127. FRAUDULENT CONVEYANCE—Mortgage—Prescription.——Where a contract of mortgage is made, the object being to give one creditor a preference over others in securing payment of a just debt, it cannot be set aside, unless suit be instituted within one year from date of agreement.—*Morris v. Exrs. of Cain*, S. C. La., April 11, 1887; 1 South. Rep. 797.

128. FRAUDULENT CONVEYANCE—Pending Suit—Knowledge.—— If, while a suit is pending against a party for assault and battery by shooting, which is a matter of general knowledge and talk, the defendant conveys his property for a small consideration to a poor neighbor,

the conveyance will be held void as to the plaintiff.—*Philbrick v. O'Connor*, S. C. Oreg., March 29, 1887; 13 Pac. Rep. 612.

129. GUARANTY—Divisibility.——A guarantee that another will pay his rent for a certain time monthly in advance is a divisible contract, and a suit for one payment is no bar to subsequent suits for other defaults.—*Weiber v. Henaire*, S. C. Oreg., March 31, 1887; 13 Pac. Rep. 614.

130. GUARDIAN — Appointment — Custody of Ward — Will.——The domicile of a child is that of its parents, and the court of that county is the proper one to appoint a guardian, though the child may be elsewhere Such guardian is entitled to the custody of the person of the child as against one to whose care the will of the parent has committed it.—*Jenkins v. Clark*, S. C. Iowa, March 19, 1887; 32 N. W. Rep. 504.

131. GUARDIAN AND WARD—Bond—Right of Action.——An action on a guardian's bond for money in his hands, first accrues when the county court determines such amount in settling his final account.—*Bisbee v. Gleason*, S. C. Neb., March 30, 1887; 32 N. W. Rep. 578.

132. GUARDIAN AND WARD—Non-resident Ward.——The appointment of a guardian for an infant or insane person residing out of Louisiana, will be duly recognized in that State, provided the guardian has duly qualified in the State where he was appointed.—*In re Parker*, S. C. La., March 21, 1887; 1 South. Rep. 891.

133. GUARDIAN AND WARD—Support.——A guardian cannot expend for the support, maintainance or education of his ward, his real estate or the proceeds in his hands, stamped with the character of realty, in excess of the annual income of the land, without obtaining an order so to do.—*Cumming v. Simpson's Adm'r.*, S. C. App. Va., Jan. 6, 1887; 1 S. E. Rep. 657.

134. HABEAS CORPUS — Criminal Case—Review. —— Where a party is sentenced by a court having jurisdiction of him and of the offense, the case cannot be reviewed by a writ of *habeas corpus*.—*Ex parte Lemkuhi*, S. C. Cal., Feb. 17, 1887; 13 Pac. Rep. 148.

135. HIGHWAY — Dedication.——Men traveling over land for any length of time will not convert it into a public highway, it must be accepted as such by the public authorities.—*Irving v. Ford*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 601.

136. HIGHWAYS—Dedication—Recording Plat.——The recording of the plat of a town is not an irrevocable dedication of the streets thereon until its acceptance by the public.—*Hayward v. Manzer*, S. C. Cal., Aug. 27, 1886; 13 Pac. Rep. 141.

137. HIGHWAYS — Future Repairs — Apportionment. ——The expense of rebuilding or repairing a highway, may be apportioned to the towns benefited thereby, under Gen. Laws, ch. 72, § 4.—*Town of Compton v. Towns of Plymouth, etc.*, S. C. N. H., March 11, 1887; 8 Atl. Rep. 824.

138. HIGHWAYS—Presumption.——Every road worked as a public road under direction of a surveyor of roads, shall be deemed in all the courts of West Virginia a public road, though it does not appear that it was formably established as such by an order of the county court.—*Ball v. Cox*, S. C. App. W. Va., Feb. 12, 1887; 1 S. E. Rep. 673.

139. HUSBAND—Wife—Witness.——The wife is not admissible as a witness against her husband without his consent, in an action for the recovery of personal property.—*Fitzgerald v. Livermore*, S. C. Cal., Feb. 25, 1887; 13 Pac. Rep. 167.

140. INFANTS — Contracts — Mortgages — Confirmation. ——A purchase by an infant of real estate, giving a mortgage therefor securing notes for the purchase money, is affirmed, and also the mortgage, by a sale of the real estate by the infant after he comes of age.—*Uecker v. Kochn*, S. C. Neb., April 6, 1887; 32 N. W. Rep. 583.

141. INJUNCTION — Appeal — Contempt.——An appeal with a *supersedeas* bond does not suspend a judgment nor an injunction, and the trial court can punish for a contempt in disobeying the injunction.—*Bullion, etc. Min. Co. v. Eureka Co.*, S. C. Utah, Feb. 2, 1887; 13 Pac Rep. 174.

142. INJUNCTION—Issue of Road Orders.——An injunction to restrain town supervisors and other officers from issuing road orders or incurring expenses in anticipation of the collection of taxes voted by the electors, in excess of the limit fixed by law, will not be granted at the instance of tax-payers.—*Sage v. Town of Fifield*, S. C. Wis., April 12, 1887; 32 N. W. Rep. 629.

143. INSOLVENCY — Assignee — Bond — Contempt.—— The bond of an assignee in insolvency does not take the place of an undertaking on appeal, when the money ordered to be paid by him in a judgment is no part of the insolvent's assets, and the assignee may be committed for contempt for not obeying the order.—*Buhtert v. Superior Court*, S. C. Cal., Feb. 22, 1887; 13 Pac. Rep. 155.

144. INSURANCE—Assignment of Life Policy.——The holder of a policy of insurance on his own life, if valid in its inception, may assign or dispose of the same, if there is nothing in the terms of the policy to prevent it. —*Murphy v. Red*, S. C. Miss., April 11, 1887; 1 South. Rep. 761.

145. INSURANCE—Companies—Capital. —— Foreign or domestic insurance companies, doing business in Nebraska, must have $100,000 of capital, in which bankable notes cannot be included.—*In re Babcock*, S. C. Neb., March 30, 1887; 32 N. W. Rep. 641.

146. INSURANCE—Fire—Agent — Risk—Premium.——If an agent insures a building at a less premium than his company authorizes, by a misconception of his duty, and the building is burned and the company pays the risk, the company, in a suit against the agent therefor, can only recover the damage it has suffered in the rates of insurance.—*State Ins. Co. v. Richmond*, S. C. Iowa, March 18, 1887; 32 N. W. Rep. 496.

147. INSURANCE — Fire — Amount — Recovery.—— In Wisconsin, in case of destruction of the premises by fire, the value of the property is the value stated in the policy of insurance, and an overestimate thereof, knowingly made by the insured, is no defense, in the absence of fraud.—*Cayon v. Dwelling-house Ins. Co.*, S. C. Wis., March 22, 1887; 32 N. W. Rep. 540.

148. INSURANCE—Fire—Forfeiture —Agent—Waiver.—— When a policy of insurance expressly denies the right of an agent to waive any of its terms, the company can claim a forfeiture for a violation, though its agent assented thereto.—*Cleaver v. Traders' Ins. Co.*, S. C. Mich., April 21, 1887; 32 N. W. Rep. 660.

149. INSURANCE—Fire — Forfeiture — Sale. —— When one party binds himself to pay a certain price for the property, and takes possession thereof, and the other contracts to convey the property on the payments being made, there is a sale of the real estate, within the meaning of a policy of fire insurance, which, under its terms, become void if the property be sold without the written consent of the company.—*Davidson v. Hawkeye Ins. Co.*, S. C. Iowa, March 19, 1887; 32 N. W. Rep. 514.

150. INSURANCE—Fire—Waiver of Breach of Policy.—— Where an agent delivers a policy of insurance and receives the premium, knowing that petroleum is kept on the premises, contrary to the conditions of the policy, such conditions are thereby waived.—*Kruger v. Western, etc. Ins. Co.*, S. C. Cal., Feb. 22, 1887; 13 Pac. Rep. 156.

151. INSURANCE—Warranty—Cargo—Over-insurance.— An over-insurance of the cargo is not a breach of the warranty of the owner not to insure his interest in the vessel beyond a certain amount.—*Merchants' M. Ins. Co. v. Allen*, U. S. S. C., March 28, 1887; 7 S. C. Rep. 821.

152. INTEREST—Conversion—Damages.——In an action for conversion of logs, interest should be allowed from the time the property was converted.—*Arpin v. Busch*, S. C. Wis., April 12, 1887; 32 N. W. Rep. 681.

153. INTERNAL REVENUE—Liquor Dealer's License.—— If a number of retail liquor dealers form an association by which they agree that they will through the association buy their beer, such retail dealers by thus

operating through the secretary of the association became wholesale dealers, and as such were liable to the penalty prescribed by law.—*United States v. Kallstrom*, U. S. D. C. (Mich.), 1887; 30 Fed. Rep. 184.

154. INTOXICATING LIQUORS—Bond—Report—Suit.——In Iowa, a suit may be brought in the name of the State at the relation of a citizen on a liquor dealer's bond for failure to make the required reports.—*State v. Martland*. S. C. Iowa, March 19, 1887; 32 N. W. Rep. 485.

155. INTOXICATING LIQUORS — Damages — Homestead. ——The front part of a house, that is a homestead, used by the husband of the owner with her consent as a saloon, is not exempt from the lien of a judgment obtained by a wife for damages caused by the sale of liquors to her husband by the saloon keeper.—*Arnold v. Gotshall*, S. C. Iowa, March 21, 1887; 32 N. W. Rep. 508.

156. INTOXICATING LIQUORS—Notice of Application for License. ——It is necessary, under ch. 50, Compiled Statutes Nebraska, to give two weeks' notice of application for license, and where said notice is published in a newspaper, the county board's action thereon, before the time during which notice must be given has expired, is void.—*Pelton v. Drummond*, S. C. Neb., March 30, 1887; 32 N. W. Rep. 593.

157. JUDGMENT—Assignment—Statute.——The assignee of a judgment can sue only, under Alabama statutes, if the assignment to him is in writing.—*Blackman v. Joiner*, S. C. Ala., Jan. 24, 1887; 1 South. Rep. 851.

158. JUDGMENT—Dismissal—Res Adjudicata.——When the decree is ordered to be dismissed with cost against the complainant and the defendant to have execution therefor, it will be presumed to be a decree on the merits and will be a bar.—*Edgar v. Buck*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 644.

159. JUDGMENT — Justice — Collateral Attack. —— Whether an *alias* summons was regularly issued or not, will not be considered in a collateral attack on a judgment of a justice of the peace.—*Dore v. Dougherty*, S. C. Cal., April 21, 1887; 13 Pac. Rep. 621.

160. JUDGMENT—Res Judicata—Assignment — Patent. ——One who, pending an action for infringement of a patent, sells out his interest in the business, is bound by a decree entered by agreement between his vendee and the plaintiff. Ruling upon patent for gelatine.—*Gloucester, etc. Co. v. Le Page*, U. S. C. C. (Mass.), March 8, 1887; 30 Fed. Rep. 370.

161. JURISDICTION — Federal Citizenship — Fortress Monroe.——Federal courts have jurisdiction of a will duly probated in the proper tribunal which involves, as to its construction, real estate in the territory of the United States at Fortress Monroe, held by testator under acts of congress and a deed from the secretary of war.—*Woodfin v. Phœbus*, U. S. C. C. (Va.), Feb. 10, 1887; 30 Fed. Rep. 289.

162. JURY — Grand Jury — Indictment.——When the grand jury return a bill of indictment in the manner prescribed by law, the court cannot inquire whether the grand jury heard the evidence, etc. It is not necessary in finding a second bill of indictment to recall and re-examined all the witnesses to the first.—*McIntyre v. Commonwealth*, Ky. Ct. App., April 16, 1887; 4 S. W. Rep. 1.

163. JUSTICE—Jurisdiction—Double Damages.——In a suit before a justice of the peace for damages for allowing fire to spread to the plaintiffs land, a judgment for $100, which is doubled under the statute, is within the jurisdiction of the justice.—*Rosevelt v. Hanold*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 443.

164. JUSTICE—Jury—Consultation—Certiorari.—— By consent of both parties, a justice retired with a jury before him to consult about changing their verdict, and they then brought in another verdict. *Held*, the court had jurisdiction to render judgment thereon, and the parties were remediless by *certiorari*.—*Snyder v. Wilson*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 642.

165. JUSTICE — Pleading.—— A complaint before a justice, so explicit as to fully inform defendant of the nature of the cause of action, and so certain in its statements of facts that a judgment thereon would be a bar to another suit for same cause, is sufficient.—*Rice v. Manford*, S. C. Ind., April 1, 1887: 11 N. E. Rep. 283.

166. LANDLORD AND TENANT — Eviction — Rent. —— When a tenant is behind in his rent, the landlord can declare the lease forfeited, and if his entry on the prem ises is peaceful, he can maintain his possession by force. —*Marsh v. Bristol*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 645.

167. LARCENY—Finding Property — Presumption.—— The finding of the stolen property in the defendant's place of business does not alone raise a presumption of his guilt, when there are other inmates of the place. —*State v. Griffin*, S. C. Iowa, March 14, 1887; 32 N. W. Rep. 447.

168. LICENSE—Coupon — Tender. —— In Virginia, a tender of a genuine coupon in payment of a license-tax is a good tender.—*Royall v. State*, U. S. S. C., March 28, 1887; 7 S. C. Rep. 826.

169. LICENSE—Stock.——Cotton taken by a merchant in payment of debts to him for goods sold, is not a part of the "stock" of such merchant, in the sense in which the word is used in § 585 of Miss. Code of 1880, fixing a privilege tax upon each store "proportionate to its stock."—*Harness v. Williams*, S. C. Miss., April 11, 1887; 1 South. Rep. 759.

170. LIENS—Advances to Secure Crop—Priority.——A mortgagee of a cotton crop, making further advances in order to gather the crop, does not thereby obtain a lien on the proceeds of the sale of the crop that precedes a lien created by a second mortgage or deed of trust.—*Wheathersbee v. Farrar*, S. C. N. Car., March 2, 1887; 1 S. E. Rep. 616.

171. LEASE—Option to Purchase—Mining Royalty.—— When a party has a lease for mining purposes with the privilege of purchase, he must pay the royalty for mining till the money for purchase is paid and the deed is delivered.—*Flynn v. White Breast Coal Co.*, S. C. Iowa, March 17, 1887; 32 N. W. Rep. 471.

172. LIMITATION—Of Actions—Rescission.——In an action to set aside a sale on the ground that the defendant had failed to pay fine of seven installments of purchase money, the prescription begins its course when default was made on the payment of the first installment.—*Pike v. Charrotte*, S. C. La., March 7, 1887; 1 South. Rep. 895.

173. LIMITATION—Bar—Part Payment.——A voluntary unqualified payment of part of a debt already barred takes the debt out of the statute of limitation.—*Marshall v. Holmes*, S. C. Wis., April 12, 1887; 32 N. W. Rep. 685.

174. LIMITATION—Excessive Payment—Modified Judgment.——The cause of action for money paid on a judgment, afterwards reduced by the court in accordance with the decision of the appellate court, arises at the time of the decision of the appellate court.—*Applegrath v. Dean*, S. C. Cal., Jan. 29, 1887; 13 Pac. Rep. 587.

175. LIMITATION —Landlord and Tenant—Crops—Lien. ——A landlord sued his tenant and obtained judgment during the six months in which a lien against the crops can be enforced; after that time had elapsed he sued a third party, to whom the tenant had sold his crops. *Held*, that under the Iowa law, the latter suit was barred.—*Mickelson v. Negley*, S. C. Iowa, March 19, 1887; 32 N. W. Rep. 487.

176. LIMITATION —Waiver—Note.——An indorsement on a note after it is barred of a waiver of the statute of limitations will revive the note.—*Jordan v. Jordan*, S. C. Tenn., March 10, 1887; 3 S. W. Rep. 896.

177. LIMITATION —Warranty—Specialty—Covenant.—— An action for breach of a warranty in a deed must be brought within five years after the breach, in Nebraska, and it may be brought by the covenantee, regardless of whether the covenant would run with the land.—*Kem v. Kloke*, S. C. Neb., March 30, 1887; 32 N. W. Rep. 574.

178. LIMITATION — Wilful Trespass.——A right of action for entering on plaintiff's land and diverting water from his well by a ditch accrues immediately, and the

action must be brought within five years thereafter.—*Williams v. County of Mills*, S. C. Iowa, March 14, 1887; 32 N. W. Rep. 444.

179. MANDAMUS—Public Printing—Contracts.——The commissioners of public printing, in Missouri, cannot be proceeded against by *mandamus* to make them let the contract to the alleged lowest responsible bidder.—*State v. McGrath*, S. C. Mo., March 21, 1887; 3 S. W. Rep. 846.

180. MARITIME LIEN—Sailing Master—Disrating.——A sailing master is entitled to a lien on the ship for his wages. He is liable to be disrated if he neglects his duties in a serious manner, and his wages will be reduced in proportion.—*King v. The Carlotta*, U. S. D. C. (N. Y.), Jan. 28, 1887; 30 Fed. Rep. 378.

181. MARITIME LIEN—Seamen.——A seaman has a lien for his wages upon the ship, irrespective of any contract as to whether the owner of the charterer shall be his paymaster. He cannot, it seems, be held to have waived his lien unless in the contract there is some compensation for such waiver secured to him.—*Boylan v. The International*, U. S. D. C. (N. Y.), March 25, 1887; 30 Fed. Rep. 375.

182. MASTER AND SERVANT — Fellow-servant — Child.——When a child is injured by dangerous machinery, on which he is negligently set to work by a fellow-servant, the master is not responsible.—*Fisk v. Central P. R. R.*, S. C. Cal., Feb. 17, 1887; 13 Pac. Rep. 144.

183. MASTER AND SERVANT—Fellow-servants—Section Boss.——When an employee of a railroad is injured by sticks and blocks of wood left on the track, it being the duty of the section boss to keep the track clear of such obstructions, the railroad is liable.—*Hullehan v. Green Bay, etc. Co.*, S. C. Wis., March 22, 1887; 32 N. W. Rep. 529.

184. MASTER AND SERVANT—Line of Duty—Liability.——When a ticket agent leaves another employee in charge of his office, who in selling a ticket disputes with the purchaser and strikes him, the railroad is liable.—*Fick v. Chicago & N. W. R. R.*, S. C. Wis., March 22, 1887; 32 N. W. Rep. 527.

185. MASTER AND SERVANT—Negligence—Instruction.——The acceptance by a railroad of a car with lumber projecting eighteen inches beyond the end thereof, does not authorize an instruction that it is negligence, in a suit by a servant who is injured thereby in coupling the car to another.—*Louisville & N. R. R. v. Gower*, S. C. Tenn., Feb. 23, 1887; 3 S. W. Rep. 824.

186. MORTGAGE — Consideration — Estoppel.——Want of consideration and of knowledge of circumstances under which a mortgage was executed may be pleaded against a third party, but cannot have any effect against such party unless very fully established. Representations of ownership or indebtedness by one person, acted on by another, conclude the former and protect the latter.—*Dwyer v. Woulfe*, S. C. La., March 21, 1887; 1 South. Rep. 868.

187. MORTGAGE — Lien — Priority Over Judgment Against Mortgagor. —— A mortgage for purchase money, executed and delivered concurrently with the deed for the land, take priority over a judgment obtained against the mortgagor before the purchase, although the mortgage is not acknowledged and recorded for five months after the recording of the deed.—*Roane v. Baker*, S. C. Ill., March 23, 1887; 11 N. E. Rep. 246.

188. MORTGAGE — Merger — Liens. —— A mortgagee, who has acquired the equity of redemption, may use the mortgage as a protection against subsequent liens.—*Colby v. McOmber*, S. C. Iowa, March 17, 1887; 32 N. W. Rep. 460.

189. MORTGAGE — Satisfaction — Judgment — Subrogation.——When a party loans money to a mortgagor to satisfy the mortgage, taking a subsequent mortgage, the land having already been sold under a judgment, which was a lien thereon, he is not entitled to be subrogated to the rights of the first mortgagee, whose mortgage was satisfied with that money, though in fact he was ignorant of the existence of the judgment when he loaned the money.—*Mather v. Jenswold*, S. C. Iowa, March 21, 1887; 32 N. W. Rep. 512.

190. MUNICIPAL CORPORATIONS — Change of Grade—Damages.——Under the Pennsylvania act, the cause of action, for damage caused by change of grade, accrues at the time of the physical change of grade, and one who purchases property and who is aware that he will be compelled to change the grade, is entitled to damages upon the actual change thereof.—*Freemansburg v. Rodgers*, S. C. Penn., March 21, 1887; 8 Atl. Rep. 872.

191. MUNICIPAL CORPORATIONS—Cities—Railroad Aid.——The law allowing taxes to be voted by municipalities to aid the construction of railroads applies also to cities specially chartered.—*Bartemeyer v. Rohlfo*, S. C. Iowa, April 20, 1887; 32 N. W. Rep. 673.

192. MUNICIPAL CORPORATIONS — Defective Streets — Costs.——The plaintiff in an action against a municipal corporation for injury caused by a defective sidewalk and brought before the New York code civil procedure went into effect, may recover costs, if he prevails, though he did not, before commencing the action, present his claim to the chief fiscal officer of the corporation.—*Taylor v. City of Cohoes*, N. Y. Ct. App., March 8, 1887; 11 N. E. Rep. 282.

193. MUNICIPAL CORPORATIONS—Injuries—Filing Claim—Court.——At an adjourned term, the court may allow a claim against a city for injuries from a defective way to be filed.—*Eastman v. City of Concord*, S. C. N. H., March 11, 1887; 8 Atl. Rep. 822.

194. MUNICIPAL CORPORATIONS—Liability for Defective Highways.—— Where commissioners have received $2,500 to spend in repairs, and have spent the sum in repairs of the objects named in appropriation, *held*, that the commissioners were not liable for want of repairs which they had not means of making, and, therefore, the town was not liable, under Laws N. Y. 1881, ch. 700.—*Monk v. New Utrecht*, N. Y. Ct. App., March 1, 1887; 11 N. E. Rep. 268.

195. MUNICIPAL CORPORATIONS—Ordinance—Cows.——An ordinance, prohibiting any one from keeping more than two cows in certain parts of San Francisco is valid. *In re Linehan*, S. C. Cal., Feb. 25, 1887; 13 Pac. Rep. 170.

196. MUNICIPAL CORPORATIONS — Streets — Grade — Retroactive Law.——No damages are allowable, under the law, for injuries sustained by a change of the grade of streets occurring prior to the adoption of the constitution of 1874.—*Folkenson v. Borough of Easton*, S. C. Penn., March 21, 1887; 8 Atl. Rep. 869.

197. MUNICIPAL CORPORATIONS—Street Improvements—Debt.——Where contractors for street improvements receive claims against the property owners, there is no debt against the municipal corporation, under the Iowa constitution.—*Davis v. City of Des Moines*, S. C. Iowa, March 18, 1887; 32 N. W. Rep. 470.

198. MUNICIPAL CORPORATIONS—Town Meetings—Authority—Ratification.——A town in Connecticut, cannot make a contract or authorize the issue of its notes by its treasurer, unless authorized at a town meeting regularly called, which the claimant must prove.—*Town of Bloomfield v. Charter Oak Nat. Bk.*, U. S. S. C., April 4, 1887; 7 S. C. Rep. 865.

199. MUNICIPAL CORPORATIONS—Villages — Severance.——Where a town incorporates, including a part of another town, but they are distinct, a proceeding to sever them should be allowed.—*Ashley v. Town of Calliope*, S. C. Iowa, March 17, 1887; 32 N. W. Rep. 458.

200. MUNICIPAL CORPORATIONS—Wharfage—Transportation.——An ordinance passed by county supervisors, regulating wharfage charges, and including transportation over the wharf, is valid.—*Ex parte Cass*, S. C. Cal. Feb. 26, 1887; 13 Pac. Rep. 169.

201. NEGLIGENCE — Carriers—Case — Presumption — Burden of Proof.—— A carrier of passengers must exercise the highest degree of care, consistent with the practicable conduct of the business, in the management thereof and in the appliances used, and when an accident occurs from any defect in such matters a pre-

sumption of negligence arises, and the burden of proof is on the carrier to prove it was guilty of no negligence in the matter.—*Pershing v. Chicago, etc. R. Co.*, S. C. Iowa, March 21, 1887; 32 N. W. Rep. 488.

202. NEGLIGENCE—Contributory Negligence.——It is negligence for the managers of a train without notice to passengers, to uncouple cars for the purpose of arranging the train in a different manner. Whether a foreigner who spoke very little English was guilty of contributory negligence in not understanding the maneuver, is a question for the jury.—*Andrist v. Union, etc. Co.*, U. S. C. C. (Colo.), Feb. 24, 1887; 30 Fed. Rep. 345.

203. NEGLIGENCE—Damages.——It is negligence for a freight train to be moved without warning, so as to injure persons who were by the custom and permission of the company in a position where they were liable to be injured by the train. $15,000 held not to be excessive damages for injuries, such as a broken thigh and fractured pelvis, of a very serious and permanent character.—*Louisville, etc. Co. v. Thompson*, S. C. Miss., April 4, 1887; 1 South. Rep. 840.

204. NEGLIGENCE—General Verdict—Special Findings.——In a case of negligence, a general verdict for the plaintiff is not vitiated by special findings in a case for killing an employee, that the place of the deceased at the time of the accident was at the brakes, but he was then riding in the cab.—*Conners v. Burlington, etc. R. Co.*, S. C. Iowa, March 18, 1887. 32 N. W. Rep. 465.

205. NUISANCE—Injunction.——When it appears that great injury will be done to the defendant by the granting of a preliminary injunction it will be refused, no corresponding injury arising to the plaintiff by the delay.—*Sellars v. Parvis, etc. Co.*, U. S. C. C. (Del.), July 9, 1886; 30 Fed. Rep. 164.

206. NEGLIGENCE—Sale of Explosive Fluid—Deception—Stamp.——Where a dealer fills an order for "puroline" by delivering "gasoline" at 74 deg. gravity, and marks the package, "puroline," and it is stamped "explosive and dangerous" by the inspector, such dealer is not guilty of negligence, as the difference in the explosive character and use of the two fluids is hardly measurable.—*Socola v. Chess Carley Co.*, S. C. La., March 21, 1887; 1 South. Rep. 824.

207. OFFICER—Certificate of Election—Oath.——The failure of a district attorney to file his certificate of election with his oath of office thereon with the secretary of State will not forfeit his office, but he cannot enter on its duties till he does so.—*State v. Colvig*, S. C. Oreg., April 11, 1887; 13 Pac. Rep. 639.

208. OFFICE — Election — Mandamus.——A person elected to an office, who is not qualified, cannot obtain a *mandamus* for a certificate of election.—*State v. Aldermen of Pierce City*, S. C. Mo., March 21, 1887; 3 S. W. Rep. 849.

209. OFFICE—Tenure.——The governor's commission to an officer is mere *prima facie* evidence of the facts recited therein, and cannot determine the time of office. *State v. Chapin*, S. C. Ind., April 5, 1887; 11 N. E. Rep. 317.

210. PARTERSHIP—Authority of Partner.——Partners, in several businesses, took stock in a woolen mill, and one partner signed the firm name to a note along with other stockholders to raise money to run the mill: *held*, that other partners were bound.—*Morse v. Hageuah*, S. C. Wis., April 12, 1887; 32 N. W. Rep. 634.

211. PARTNERSHIP—Proof of—Liability.—— Evidence that A is a member of a partnership in September, and signed contracts then relative to a contract made in March, is no proof that he was a partner in July.—*Butler v. Henny*, S. C. Ark., March 26, 1887; 3 S. W. Rep. 878.

212. PATENT—County—Contractor.——A county is not liable for infringements of a patent by a contractor who is doing work for the county, if the county authorities knew nothing of his having violated the patent by using the article without authority.—*May v. Juneau County*, U. S. C. C. (Wis.), Feb. 11, 1887; 30 Fed. Rep. 241.

213. PATENTS — Infringement—Re-issue—Injunction—Contempt.——Letters patent 70,027 are not infringed by patent 70,075; but 70,627, re-issue No. 5,400, is void. A fine for contempt in violating an injunction, which is awarded to the opposite party, is reviewable in the supreme court, and such fine cannot be sustained when the patent is void, relative to which the injunction was issued.—*Worden v. Searl*, U. S. S. C., March 28, 1887; 7 S. C. Rep. 814.

214. PATENT—Invalid—Claim—Disclaimer.——Ruling on the subject of filing a disclaimer of invalid claims.—*Kittle v. Hall*, U. S. C. C. (N. Y.), March 9, 1887; 30 Fed. Rep. 239.

215. PATENT — License—Receiver.——The extent of a license to sell patented articles is construed by the apparent intent of the parties. The receiver of an insolvent firm which had made and sold patented stoves may, as far as necessary to wind up the business, make and sell those articles. An injunction to forbid him is properly refused.—*Montross v. Mabie*, U. S. C. C. (N. Y.), March 21, 1887; 30 Fed. Rep. 234.

216. PATENTS—Register—Car Fares—Infringement.——Patent No. 260,526 for car-fare registers not infringed by defendant's device.—*Railway, etc. Co. v. Broadway, etc. Co.*, U. S. C. C. (N. Y.), March 11, 1887; 30 Fed. Rep. 238.

217. PAYMENT—Judgment—Reversal—Recovery.——Payment of a judgment is no waiver of the right of appeal or of writ of error, and if the judgment is afterwards reversed the money paid may be recovered.—*Chapman v. Sutton*, S. C. Wis., April 12, 1887; 32 N. W. Rep. 683.

218. PENSION AGENT—Bond—Sureties.——When no demand, prior to a suit, was made upon the surety of a pension agent, interest upon the amount of principals will only be computed against the surety from the day he was sued.—*United States v. Poulson*, U. S. D. C. (Penn.), March 18, 1887; 30 Fed. Rep. 231.

219. PLEADING—Affidavit of Defense—Novation.——In an action of *assumpsit*, an affidavit of defense stating that plaintiff had in writing contracted to substitute a third party for the defendant, must set out the written agreement.—*Lucas Coal Co. v. Hunt*, S. C. Penn., March 7, 1887; 8 Atl. Rep. 860.

220. PLEADINGS—Amendment—Note.——When, in a suit on a note, the plaintiff omits to state that the note was due when the suit was brought, and the defense is on other points, the court can allow the petition to be amended on that point and require the defendant to answer instanter.—*Brisbois v. Lewis*, S. C. Colo., Feb. 18, 1887; 13 Pac. Rep. 179.

221. PLEADING—Complaint—Benefit Association.——In an action on the certificate of a benefit association, if the circumstances under which the injury took place are specifically set forth, followed by the averment that the plaintiff had "performed all the conditions and terms of such certificate on his part," the complaint is sufficient.—*National Ben. Assn. v. Bowman*, S. C. Ind., April 9, 1887; 11 N. E. Rep. 316.

222. PLEADING—Contributory Negligence.——Where defendant, in an action for injury caused by his alleged negligence, affirmatively sets up plaintiff's alleged contributory negligence, he may be required to make his answer definite and certain by stating in what particulars plaintiff was negligent.—*McQuade v. C. & N. W. Ry. Co.*, S. C. Wis., April 12, 1887; 32 N. W. Rep. 633.

223. PLEADING—Demurrer to Complaint.——A pleading will not be held bad on demurrer for mere uncertainty or indefiniteness in its allegations, which might be corrected on motion to make more definite and certain.—*Pittsburg, etc. R. Co. v. Hixon*, S. C. Ind., March 31, 1887; 11 N. E. Rep. 285.

224. PLEADING—Title of Petition.——Where a petition was filed, entitled "In the circuit court of Iowa, in and for Marion county:" *Held*, the judgment was void, the defendant not appearing, under the Iowa code.—*Jordan v. Brown*, S. C. Iowa, March 15, 1887; 32 N. W. Rep. 450.

225. POOR HOUSE—Officers—Removal—Intrusion.——The board may appoint officers of the poor-house and remove them as they deem best. A party guilty of in-

trusion into a public office may be fined in an amount proper for due punishment and to prevent others from so acting.—*State v. Haines*, S. C. N. J., February Term, 1886; 8 Atl. Rep. 728.

226. PRACTICE—Bill of Exceptions—Appeal.——A bill of exceptions must be served, signed and filed within the time allowed by law, unless it is extended by order of the court or judge; otherwise it will be stricken from the docket.—*Evans v. Baggs*, S. C. N. Mex., Jan. 14, 1887; 13 Pac. Rep. 207.

227. PRACTICE—Defective Summons.——The remedy for a defective summons, if any, is to move the trial court to quash or set it aside.—*Parker v. Wardner*, S. C. Idaho, Feb. 14, 1887; 13 Pac. Rep. 172.

228. PRACTICE—Defendants—Contract—Appeal—Judgment.—In Oregon, in a suit on a contract, the defendants not liable on the contract may be dropped and judgment rendered against the others. When the trial court renders judgment *non obstante veridicto*, the supreme court, on reversing the judgment, will not direct the trial court to enter a judgment for the appellant—*Fisk v. Henaire*, S. C. Oreg., Oct. 20, 1886; 13 Pac. Rep. 193.

229. PRACTICE—Fees of Sheriff—Mandamus. —— The remedy of a sheriff, where the county commissioners refuse to pay his fees when there are funds in the county treasury liable to his claim, is by *mandamus*.—*Hunter v. Co. Commrs.*, S. C. S. Car., Feb. 28, 1887; 1 S. E. Rep. 670.

230. PRACTICE — Injunction — Parties. —— Separate owners of lots may join in a suit to enjoin a town from constructing a drain that will wrongfully pour waters on their respective lots.—*Town of Sullivan v. Phillips*, S. C. Ind., April 7, 1887; 11 N. E. Rep. 300.

231. PRACTICE—Injunction—Sale of Mortgaged Land.—Where a mortgagor applies for an injunction to prevent the trustee under the mortgage from selling the land, because personal property sold by him was sufficient to pay the debt, and because the mortgagor has a homestead in the land, and it appears that the security would remain unimpaired, the injunction is properly continued until the case is heard on its merits.—*Whitaker v. Hill*, S. C. N. Car., March 2, 1887; 1 S. E. Rep. 639.

232. PRACTICE—Insanity—Costs—Appeal. —— A proceeding to adjudge a person's sanity is a special statutory proceeding, but the court, where it permits a dismissal, may also award costs against complainant who, if he does not object below, cannot successfully assail such judgment on appeal.—*Ruhlman v. Ruhlman*, S. C. Ind., April 5, 1887; 11 N. E. Rep. 294.

233. PRACTICE—Insurance—Instructions — Former Application.——In an action on two life insurance policies, an instruction by the court as to the second policy and the application therefor, that since it appeared from the testimony that the defendant knew by the first application that the answers of the second were not true, the defendant could not claim anything by reason thereof, *held*, error.—*Brown v. Metropolitan Life Ins. Co.*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 610.

234. PRACTICE—Instruction—Finding—Pledge — Fraud. ——Where the trial court instructed a jury that the officers of a corporation had power to pledge certain of its assets, and the jury found it to be fraudulent, a judgment affirming the findings will not be set aside.—*Caswell v. Harris*, S. C. Cal., Feb. 23, 1887; 13 Pac. Rep. 166.

235. PRACTICE—Instruction— Harmless Error.——An instruction relative to a question of marriage, if erroneous, is a harmless error, when it is shown that, under no construction of law, was there a marriage.—*Estate of Briswalter*, S. C. Cal., Feb. 23, 1887; 13 Pac. Rep. 164.

236. PRACTICE — Instructions — Harmless Error.—— When a proper instruction is refused, but the jury find the facts contrary to the theory of the instruction, such refusal is a harmless error.—*Sandwich M. Co. v. Nicholson*, S. C. Kan., April 8, 1887; 13 Pac. Rep. 597.

237. PRACTICE—Jurisdiction—Demurrer — Foreclosure. When a suit to foreclose a mortgage is brought in the wrong county, the question of jurisdiction may be raised at any time, and is not waived by consent, so a demurrer to the petition therefor is proper.—*Orcutt v. Hanson*, S. C. Iowa, March 18, 1887; 32 N. W. Rep. 482.

238. PRACTICE — Motion — Judgment — Defense. —— When a motion to strike out an amended complaint is pending, it is error to grant a judgment by default, and it is error to refuse to set it aside, unless the defendant will agree not to plead the statute of limitations.—*Mitchell v. Campbell*, S. C. Oreg., Jan. 31, 1887; 13 Pac. Rep. 190.

239. PRACTICE—New Trial—Affidavit of Jurors of Misconduct.—Affidavits of jurors are not admissible to show their own misconduct and impeach their verdict, even as to overt acts.—*Taylor v. Garnett*, S. C. Ind., April 5, 1887; 11 N. E. Rep. 309.

240. PRACTICE—Partition—Decree—Fraud — Bona Fide Purchaser.——Where a party obtains a decree of partition, suppressing facts which would have defeated the action, it will be vacated on the application of the parties in interest. A purchaser, with knowledge of the facts from such party, is not protected.—*Daleschal v. Geiser*, S. C. Kan., April 8, 1887; 13 Pac. Rep. 595.

241. PRACTICE—Pleading—Surplusage.—In a complaint to collect a drainage assessment, a copy of only so much of the report of the commissioners as affects the defendant's land need be made part of the complaint.—*Wishmier v. State*, S. C. Ind., April 2, 1887; 11 N. E. Rep. 291.

242. PRACTICE—Service of Summons — Misnomer.—— A service of summons on the right person by the wrong name is sufficient. If he objects, he must plead in abatement. A service by publication with the wrong name is void.—*Skelton v. Sacket*, S. C. Mo., March 21, 1887; 3 S. W. Rep. 874.

243. PRACTICE—Trial — Instructions. —— Instructions are to be considered as a whole and not by isolated sentences, and it is sufficient, if they have properly instructed the jury on all the essential features of the case.—*Brown v. McCord, etc. Co.*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 441.

244. PRACTICE—Writ of Error—Citation.——When a citation is not issued and the defendants in error do not appear, the writ of error will be dismissed.—*United States v. Phillips*, U. S. S. C., April 11, 1887; 7 S. C. Rep, 874.

245. PRINCIPAL AND AGENT — Declarations of Agent. ——A principal is not bound by the declarations of his agent at the time of making a contract, when such statements were not inducements to the making of the contract nor part of its conditions.—*Menick T. Co. v. Philadelphia, etc. Co.*, S. C. Penn., March 21, 1887; 8 Atl. Rep. 795.

246. PRINCIPAL AND AGENT—Sale—Warranty—Custom. ——An agent employed to sell has no implied authority to warrant, unless warranting is the custom of the trade, and either party may prove the custom relative thereto. *Pickert v. Marston*, S. C. Wis., March 22, 1887; 32 N. W. Rep. 550.

247. PRINCIPAL AND SURETY—Extension—Knowledge. ——A surety is discharged if an extension is granted to the principal without his consent; mere knowledge thereof is immaterial.—*Lambert v. Shetler*, S. C. Iowa, March 17, 1887; 32 N. W. Rep. 424.

248. PUBLIC LANDS—California—Actual Settlers—Constitution.——State lands suitable for cultivation, for which applications were pending when the California constitution was adopted, can be granted only to actual settlers.—*Manley v. Cunningham*, S. C. Cal., April 21, 1887; 13 Pac. Rep. 622.

249. PUBLIC LANDS—Patent—Attack.——In an action of ejectment, a patent for public lands cannot be attacked.—*Sanford v. Sanford*, S. C. Oreg., March 16, 1887; 13 Pac. Rep. 602.

250. PUBLIC LANDS—Pre-emption—Deed—Date — Presumption.——When the deed of a pre-emptor bears the same date as his certificate of purchase, there is no presumption that the first was prior in time.—*Raisback v. Carson*, S. C. Wash. Ter., Feb. 4, 1887; 13 Pac. Rep. 618.

251. PUBLIC LANDS—Tax-sale—Estoppel—Records.——

If one who enters upon public lands afterwards obtains a patent, such patent relates back to the original entry, and a tax-sale in the interval between the entry and the patent is valid and confers a title on the purchaser. His suffering the patentee or those claiming under him to pay subsequent taxes does not estop him from asserting his tax-title. Ruling as to Wisconsin statutes relating to indexing records of deeds.—*Coleman v. Peshtigo, etc. Co.*, U. S. C. C. (Wis.), January, 1887; 30 Fed. Rep. 317.

252. RAILROAD — Crossing at Grade. —— In the construction of railroads, in Pennsylvania, the crossing of one track by another at grade is discouraged, it will only be permitted when the interests of the newer road imperatively demand it, those of the older roads are not seriously impaired, and the local authorities consent.—*Pennsylvania, etc. Co's Appeal*, S. C. Penn., April 11, 1887; 8 Atl. Rep. 914.

253. RAILROAD — Double Damage Act. —— A local double damage act is a police regulation. The decision of the supreme court of the State as to its construction controls federal courts. The Missouri act on the subject does not apply to the successor of the North Missouri Railroad Company.—*Cent., etc. Co. v. Wabash, etc. Co. (Elmes Intervenor,)* U. S. C. C. (Mo.), March 24, 1887; 30 Fed. Rep. 344.

254. RAILROAD — Eviction of Passengers. —— If a colored woman declines to take the comfortable place assigned to her in the first car, and insists on going into the rear car, against the rules of the road, she is properly put off the train, it being manifest that the object was to get up a lawsuit.—*Chesepeake, etc. Co. v. Wells*, S. C. Tenn., April Term, 1887; 4 S. W. Rep. 5.

255. RAILROAD — Facilities — Mandamus.——When, in answer to *mandamus* proceedings to require a railroad to run more trains and to keep their track in repair, the railroad states that such portion of the road does not pay expenses, and they are unable to make the repairs asked, the writ will be refused.—*Ohio, etc. R. Co. v. People*, S. C. Ill., March 23, 1887; 11 N. E. Rep. 347.

256. RAILROAD — Horse-railroad —Monopoly.——The grant of exclusive right to operate *horse*-railways does not preclude the city from authorizing a *cable* railway. Grants of franchises belonging to the public are strictly construed. Rulings upon Nebraska statutes. —*Omaha, etc. Co. v. Cable, etc. Co.*, U. S. C. C. (Neb.), March 5, 1887; 30 Fed. Rep 324.

257. RAILROAD — Insolvency — Priority. —— A bank which loaned money to a railroad company on security of second mortgage bonds, is not entitled to priority over first mortgage bonds although the money it loaned was used to pay debts which would have had priority, the record not showing any fraud on the part of the company or on that of the receiver after its insolvency. —*Penn v. Calhoun, Trustee*, U. S. C., April 11, 1887; 7 S. C. Rep. 906.

258. RAILROAD—Killing Stock.——A railroad company is not responsible in damages for killing stock, if the engineer makes every exertion he can to stop the train in time to avoid a collision.—*Yazoo, etc. Co. v. Brumfield*, S. C. Miss., April 18, 1887; 1 South. Rep. 905.

259. RAILROAD — Receiver — Mortgage—Judicial Sale—Estoppel.——Preferred debts, as for labor or materials furnished one division of a system of railroads, are a lien upon all the constituent divisions. Rule as to appropriation of earnings. A mortgagor has full control of the income of mortgaged property until proceedings are commenced for foreclosure. The decree ordering a judicial sale is the measure of the rights of a purchaser at such a sale. When underlying, special mortgages are estopped by a decree adjusting all the mortgages.—*Central, etc. Co. v. Wabash, etc. Co.*, U. S. C. C. (Mo.), March 22, 1887; 30 Fed. Rep. 332.

260. RAILROAD—Track in Street—Abutters—Limitations —Cars on Street.——If the constitution of a State guarantees to property owners compensation for property "damaged," the owners of lots on a street on which railroad tracks are laid are entitled to damages. The statute of limitations runs against the abutters from the time the street is so occupied. If cars are left standing on the street, a cause of action accrues for each day's continuance of the obstruction.—*Franke v. Jackson Receiver*, U. S. C. C. (Colo.), March 7, 1887; 30 Fed. Rep. 396

261. RECEIVERS—Courts—Jurisdiction—Appeal.—— A court at special term may direct a receiver, appointed at general term, about the expenditure of his moneys, the general term having so authorized. So a court can direct the receiver about the preservation of the property, though the case is appealed and a *supersedeas* bond has been given. At the same time it may order a reference to see whether a tenant shall pay rent to the receiver or to the defendant, which order is not appealable.—*Grant v. Phœnix, etc. Co.*, U. S. S. C., April 4, 1887; 7 S. C. Rep. 849.

262. REMOVAL OF CAUSES.——When a cause removed from a State court has been remanded because the diverse citizenship is not properly set forth, it cannot be again removed. The decision on a motion to remand, unless appealed from, is conclusive.—*Johnston v. Donovan*, U. S. C. C. (N. Y.), March 18, 1887; 30 Fed. Rep. 395.

263. REMOVAL OF CAUSES—Citizenship—"Suit of a Civil Nature"—Waters.——A statutory proceeding under a State statute to assess damages for diverting water in one State from a mill in another, is a "suit of a civil nature," within the meaning of the statute, and removable on the ground of citizenship. It will not, if removed, be remanded because the proceeding is statutory. The owner of land in one State may have as an appertenance thereto an interest in land or water in another State.—*Banigan v. City of Worcester*, U. S. C. C. (Mass.), March 16, 1887; 30 Fed. Rep. 392.

264. REMOVAL OF CAUSES — Laches. ——Where the record is not transmitted to the federal court for fifteen months by reason of the negligence of the defendant's counsel, the cause will be remanded on motion of plaintiff's counsel, notwithstanding *his* laches in so long delaying his motion to remand.— *McGregor v. McGillis*, U. S. C. C. (Wis.), January, 1887; 30 Fed. Rep. 388.

265. REPLEVIN—Verdict—Jury.——If, in an action of replevin against two or more defendants, one of them appears not to have have had any of the goods nor claimed any of them, it is error to permit a verdict to stand against him. The genuineness of the signature to a paper put in evidence is a question for the jury.—*Hulett v. Patterson*, S. C. Penn., March 28, 1887; 8 Atl. Rep. 917.

266. RIPARIAN RIGHTS—Boundaries — Easement.—— On the Ohio river, riparian proprietors own to low water mark, subject to the easement of the public for wharves between high and low water mark. A warranty in a deed calling for low water mark, is not broken by the fact that the State or a municipal corporation has enjoined the vendee from building a wharf on his land between high and low water mark.—*Barre v. Fleming*, S. C. App. W. Va., Feb. 5, 1887; 1 S. E. Rep. 731.

267. SALE—Conditional—Surety—Replevin.——Where a surety is compelled to pay the note on which he is surety, given for property which was to remain the vendor's till fully paid for, he can replevy the property from an insolvent person, to whom the vendor, with the consent of the maker of the note, has sold it.—*Myers v. Yaple*, S. C. Mich., March 14, 1887; 32 N. W. Rep. 442.

268. SALE—Conditional—Title—Exchange—Damages.— If a sale is made of personal property, which is delivered, but it is agreed that the payment shall be made in installments, but the title shall not pass until the payments are completely made, such sale is valid. It is lawful for the vendee to exchange the property so sold for other property, with the consent of the vendor. In such case the title to the last acquired property vests on the exchange in the vendor, and he can recover damages for its detention. Rule for computing damages in such a case.—*McGinnis v. Savage*, S. C. App. W. Va., Feb. 2, 1887; 1 S. E. Rep. 746.

269. SALE—Fraud—Representations. ——A purchaser from an inventor of a machine, making false representations to him, when he has no means to test their falsity, is not guilty of negligence if he relies thereon, although such inventor told him not to take his word, but to satisfy himself, since such inventor must have known that the inquiries would prove fruitless.—*Hicks v. Stevens*, S. C. Ill., March 22, 1887; 11 N. E. Rep. 241.

270. SALE—Judicial Sale—Infancy—Laches.——A judicial sale will not be set aside when it appears that the plaintiff, then defendant and a minor, accepted service of process, waiving all errors, and a guardian *ad litem* filed an answer for her, stating that there was no objections to the sale. Twelve years' delay in bringing the suit to set aside the sale is laches.—*Cates v. Pickett*, S. C. N. Car., March 28, 1887; 1 S. E. Rep. 763.

271. SALE—Judicial—What Title Passes.——The rule that, upon sale under execution of the debtor's right, title and interest, the debtor is entitled to have the proceeds applied in satisfaction of the judgment, though the title of purchaser fails, does not apply to sale under special decree ordering a sale of land free and clear of all claim of the debtor, or those claiming under him. The purchaser gets such a title as is ordered to be transferred.—*Wallace v. Berdell*, N. Y. Ct. App., March 8, 1887; 11 N. E. Rep. 274.

272. SALE—Of Ship—Examination.——One who contracts to sell a ship is bound to furnish the vendee an opportunity to examine it, but not to put it into a dry dock for that purpose.—*Lincoln v. Gallagher*, S. J. C. Me., Feb. 28, 1887; 8 Atl. Rep. 883.

273. SALVAGE—A tug worth $5,000, disabled, decreed to pay $1,250 salvage to a pilot-boat which stayed with her all night through a storm and carried her safe into port.—*Gillespie v. The Mary N. Hogan*, U. S. D. C. (N. Y.), March 14, 1887; 30 Fed. Rep. 381.

274. SALVAGE—Gale —— A ship which had gotten ashore was held to pay $3,500 to two tugs which rescued her just before a heavy gale set in, which would assuredly have destroyed the ship, although the latter had only agreed generally, and without reference to the impending storm, to pay $800 to be pulled off.—*Tebo v. The Cassandia*, U. S. D. C. (N. Y.), March 14, 1887; 30 Fed. Rep. 379.

275. SEAMEN—Medical Services.——It is the duty of a master of a ship to provide suitable medical attention to any of the seamen who may need such attention. The ship is liable for his neglect to do this duty.—*Stoker v. The Vigilant*, U. S. D. C. (N. Y.), March 4, 1887; 30 Fed. Rep. 288.

276. SHERIFF—Fees—Boarding Prisoners.——The fees of a sheriff for boarding prisoners is determined by the act of 1885.—*Lane v. Missoula Co.*, S. C. Mont., Feb. 2, 1887; 13 Pac. Rep. 136.

277. SHERIFF—Liability.—— A surety, against whom and the principal a judgment has been rendered, can only hold the sheriff liable for a failure to first levy the execution upon the principal's property, when he has shown that he has complied with the requirements of §§ 1212 and 1213, Rev. Stat. Ind. 1881.—*Bliss v. Douch*, S. C. Ind., April 6, 1887; 11 N. E. Rep. 293.

278. SHIPPING—Charter—Tender. —— Upon a refusal to take goods according to a charter, the rule of damages is the difference in the market price of transportation, or the actual cost of subsequent transportation, with attendant expenses. A tender and payment into court may be accepted at any time.—*Dillenbach v. The Rossend Castle*, U. S. D. C. (N. Y.), April 5, 1887; 30 Fed. Rep. 402.

279. STATES—Finances of State — Powers — Constitutional Law.——A State can regulate its own financial affairs to suit itself, except so far as it is limited by contract with third persons. Certain statutes of Louisiana declared constitutional. Ruling upon levee districts and upon compacts between States with reference to levees.—*Fisher v. Steele*, S. C. La., March 21, 1887; 1 South. Rep. 882.

280. STATES—State Officers — Removal of Legislative Chambers—Effect on Salaries.——The mere change of location of the legislative chambers from the old to the new capitol did not affect the salaries of the persons employed to keep them clean, nor of those employed in the State hall, the amount of whose pay depended upon that of the persons employed in the capitol.—*Poole v. State*, N. Y. Ct. App., March 8, 1887; 11 N. E. Rep. 275.

281. STATUTES—Indian Country.——A statute which has been repealed may be referred to as defining the term "Indian country," as used in several sections of the Revised Statutes of the United States. Indian country means "all that part of the United States west of the Mississippi, and not within the States of Louisiana and Missouri, or the territory of Arkansas, and also that part of the United States east of the Mississippi, and not within any State to which the Indian title has not been extinguished." (Act of June 30, 1834, § 1.) The Red Lake and Pembina Indian reservation is Indian country.—*United States v. Le Bris*, U. S. S. C., April 18, 1887; 7 S. C. Rep. 894.

282. STORAGE OF GOODS—Contract—Burden of Proof. ——In a suit for injury to eggs stored in defendant's warehouse under a contract for cold storage, the burden is on the plaintiff to prove that the eggs were in fit condition for the temperature of the warehouse, and were injured solely by defendant's act.—*Boswell v. Collins*, S. C. Penn., April 4, 1887; 8 Atl. Rep. 845.

283. SUNDAY — Contract — Burden of Proof.——In a contract dated on a week day, the burden of proof is on the defendant to prove his defense that it was executed and delivered on Sunday.—*Shaw v. Waterhouse*, S. J. C. Me., Feb. 28, 1887; 8 Atl. Rep. 829.

284. SURETY — Liability — Duty of Creditor.——The obligee, knowing facts which increase the surety's liability, is not bound to inform the surety thereof, unless he knows the surety to be ignorant of them.—*Bank of Monroe v. Gifford*, S. C. Iowa, March 18, 1887; 32 N. W. Rep. 669.

285. TAXATION — National Banks — Stockholders.—— Stockholders in national banks can be assessed in New Jersey on the value of their stock.—*Nat. Newark Bk. Co. v. Mayor of City of Newark*, U. S. S. C., April 4, 1887; 7 S. C. Rep. 839.

286. TAXATION — National Banks — Stockholders.—— Stockholders in national banks can be assessed in New York on the value of their stock.—*Mercantile Nat. Bk v. Mayor of New York*, U. S. S. C., April 4, 1887; 7 S. C. Rep. 826.

287. TAXATION—Redemption — Equity.——A redemptioner who goes into equity to establish his right to redeem land from a tax-deed, must refund the taxes paid by the purchaser after the execution of the deed with interest and the legal penalty, whether duplicate receipts have been filed with the auditor or not.—*Elliott v. Parker*, S. C. Iowa, March 17, 1887; 32 N. W. Rep. 494.

288. TAXATION— Redemption — Legal Tender—Mandamus.——When land is redeemed from a tax-sale the county treasurer must refund to the purchaser his money in legal tender money, or may be compelled to do so by *mandamus*.—*Murphy v. Smith*, S. C. Ark., April 2, 1887; 3 S. W. Rep. 891.

289. TAXATION— Voluntary Payment—Recovery.—— Money voluntarily paid on an assessment for street improvements cannot be recovered.—*Churchman v. City of Indianapolis*, S. C. Ind., April 1. 1887; 11 N. E. Rep. 301.

290. TAXES—Limitations.——Laws fixing the term in which actions must be brought on pecuniary obligations do not affect the State, unless she in terms includes herself.—*Reed v. His Creditors*, S. C. La., Jan. 3, 1887; 1 South. Rep. 784.

291. TAXES—Payment Under Protest—Levy.——When a tax collector levies on personal property for taxes on real estate, the owner may pay the taxes under protest and recover the money paid, if he is not liable for the taxes.—*Babcock v. Township of Beaver Creek*, S. C. Mich., April 21, 1887; 32 N. W. Rep. 653.

292. TENANCY IN COMMON—Chattel—Conversion—Detention.——If two persons are tenants in common of a crop of tobacco, and one refuses to deliver to the other his share because a division then would be injurious to the crop, such detention is not a conversion. If while so detained the crop is destroyed, the party kept out of possession is entitled to damages, nominal or substantial, according to the facts proved.—*Sheasin v. Ragsbee*, S. C. N. Car., March 28, 1887; 1 S. E. Rep. 770.

293. TIMBER—Trespass—Damages — Good Faith.—— In an action for trespass in cutting timber from plaintiff's land, the plaintiff is entitled to the highest market value thereof, though the defendant claims to have bought the land in good faith, if defendant knew at the time of purchase of the facts invalidating his title, or was informed thereof prior to the trespass.—*Warren v. Putnam*, S. C. Wis., March 22, 1887; 32 N. W. Rep. 583.

294. TOWNSHIP — Election of Officers — Organization. —— Under Iowa laws, the county supervisors can create new townships and provide for the first election, but subsequent elections are not affected by irregularities in the first.—*Lones v. Harris*, S. C. Iowa, March 17, 1887; 32 N. W. Rep. 464.

295. TRESPASS — Drain Proceedings — Evidence.—— When the defendant in a trespass case justifies his entry on the land under a contract with the drain commissioner to construct a drain, if the proceedings before the commissioner are void they cannot be offered in evidence.—*Watters v. Chamberlain*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 440.

296. TRESPASS—Lessee — Loss of Crops — Railroad — Damages.——A lessee who, by continued and repeated trespasses loses his crop, can hold the trespasser liable for the full value of the crops. A railroad company whose employees in constructing the road trespass upon lands outside the right of way, is liable for such trespasses. And such damages are not included in the compensation paid for the right of way.—*Bridgers v. Dill*, S. C. N. Car., March 16, 1887; 1 S. E. Rep. 767.

297. TRUST—Estoppel.——A parol trust declared by a father in favor of his daughter and her husband, cannot be set up after the lapse of twenty years and after the death of the father. The daughter and her husband are estopped by a lease executed by them with the father, in which the latter was declared to be the owner of the property, and which settled a life estate in the land on the wife.—*Laughlin v. Mitchell*, U. S. S. C., April 25, 1887; 7 S. C. Rep. 923.

298. TRUSTS—Express—Parol Evidence.——The existence of an express trust cannot be proved by parol.—*Columbus, etc. R. Co. v. Braden*, S. C. Ind., April 20, 1887; 11 N. E. Rep. 357.

299. TRUSTS—Fraud—Partnership — Appeal. —— If a trustee misapplies a trust fund, by paying it to one who knows he is not entitled to it, the *cestui que trust* may proceed against either or both. If the party so illegally receiving the fund is a partnership, the action may be brought against its members after the dissolution of the partnership. An appellate court will not inquire into a question of fraud in the creation of the trust if that question was not raised in the court below.—*Vance v. Kirk*, S. C. App. W. Va., Feb. 5, 1887; 1 S. E. Rep. 717.

300. TRUSTS—Resulting—Courts—Jurisdiction.——The court of common pleas, sitting as a court of equity, can declare a resulting trust in lands, but in such cases the proof must be clear, explicit and unequivocal.—*Appeal of Jackson*, S. C. Penn., March 28, 1887; 8 Atl. Rep. 870.

301. TRUSTS — Secret Agreement—Accounting.——A, who had placed the title of his property in the names of his sureties and then entered the army, filed a bill to have the property restored to him by his brother B, who had gotten the title from the sureties by paying the debt with A's money. B had subsequently to these transactions become insane. It was held that B held the legal title as trustee for his brother.—*Clark v. Clark*, S. C. Miss., April 4, 1887, 1 South. Rep. 835.

302. UNITED STATES — Claims — Appropriations.—— The passage of acts for the payment of certain claims, does not make the United States liable for all similar claims.—*United States v. Jones*, U. S. S. C., March 28, 1887; 7 S. C. Rep. 850.

303. VENDOR AND VENDEE—Breach—Damages.——A vendor of land who has been put to expense to fulfill the contract on his part may recover damages from the vendee who has failed to perform his part.—*Kelly v. West*, S. C. Minn., April 29, 1887; 32 N. W. Rep. 620.

304. VENDOR AND VENDEE — Fraud — Judgment — Res Judicata.——Allegations of fraud in procuring a mortgage are not admissible against a purchaser at a foreclosure sale, no fraud or bad faith on his part being alleged. If the validity of a mortgage is litigated in the foreclosure proceedings, the questions of fraud in the procurement of the mortgage and payment are *res judicata*, as to all parties or privies to the action.—*Raff v. Doty*, S. C. S. Car., Feb. 28, 1887; 1 S. E. Rep. 707.

305. VENDOR AND VENDEE—Purchase Money — Election.——A sold land by contract to B, who made some payments thereon, but did not take possession. A then conveyed the land to C. B then sued for a recovery of the money paid. *Held*, that B had elected to consider the contract as rescinded, and he could recover. —*Weaver v. Atcheson*, S. C. Mich., April 14, 1887; 32 N. W. Rep. 436.

306. VENUE—Two Counties—Parties—Demurrer—Statute.——Where, in a real action, the land sought to be recovered, lies in two or more counties, suit may be brought in either county. If parties are very numerous and hard to find, one or more may, in North Carolina by statute, sue or defend for all. If a complaint states that a plaintiff claims under a will and that defendants claim under a deed, it is not demurrable because the allegations are merely statements of evidence.—*Thames v. Jones*, S. C. N. Car., March 28, 1887; 1 South. Rep. 692.

307. VOTERS — Fraudulent Registration. —— The offense of fraudulently registering and voting in an election at which a member of congress is to be chosen is an infamous crime, and must be prosecuted by indictment and not by information.—*Parkison v. United States*, U. S. S. C., April 18, 1887; 7 S. C. Rep. 896.

308. VOTERS—Striking off Roll—Appeal ——The circuit courts and Baltimore city courts may determine an appeal from the register of voters to strike illegally registered voters after the regular November election, when the appeal was taken before the election.—*Mayor of Baltimore v. Fledderman*, Md. Ct. App., March 17, 1887; 8 Atl. Rep. 758.

309. WATER AND WATER-COURSES—Use for Navigation —Canals.——Under law New York, 1813, ch. 144, defendant has a right to the reasonable use of the water of a canal for the purposes of navigation and to no more; and it can cause no more leakage or wastage than is fair or reasonable under all the circumstances of the case.—*Silsby Mfg. Co. v. State*, N. Y. Ct. App., March 1, 1887; 11 N. E. Rep. 264.

310. WAYS — Prescription —License — Public Corporation.——A way cannot be acquired by prescription, when it was obtained by a license, even though the parties receiving it had no authority from their principal, a municipal corporation, unless the licensors know the way is claimed under some other right than the license. —*Deerfield v. Conn. River, etc. R. Co.*, S. J. C. Mass., April 4, 1887; 11 N. E. Rep. 105.

311. WHARF—Boat-house. ——A floating boat-house is an appropriate subject for a maritime contract for wharfage.—*Woodruff v. One Covered Scow*, U. S. D. C. (N. Y.), Feb. 18, 1887; 30 Fed. Rep. 269.

312. WHARVES—Warning.——The owners of wharves or slips, knowing them to be unsafe for public use, are bound to give warning of the danger.—*Heissenbuttel v. Mayor, etc. New York*, U. S. D. C. (N. Y.), April 7, 1887; 30 Fed. Rep. 456.

313. WILL—Charge on Land—Jurisdiction of Orphan's Court.——Where a testator gives his son land and pro-

vides that he shall support testator's wife and at her death pay to his daughter Esther the sum of $1200: *Held*, that this legacy to Esther was no charge on the land, and was simply a personal obligation on part of devisee, and therefore the orphan's court had no jurisdiction to direct payment of this legacy out of the real estate.—*Schwehl's Appeal*, S. C. Penn., March 14, 1887; 8 Atl. Rep. 874.

314. WILL—Construction.——Where by a codicil to a will the two devisees were to have interchangeably an interest in coal seams that may be discovered on the lands of each other, if either of the devisees should die without lawful issue or a will the survivor should take the estate devised to the decedent: *Held*, that each took a life estate with power of appointment, and one having died without issue and without heirs, the fee simple vested absolutely in the survivor.—*Johnson v. Citizens' Bank*, S. C. App. Va., March 31, 1887; 1 S. E. Rep. 705.

315. WILL—Construction.——A will made by a wife in which these words are used; "I give and devise to my husband the farm on which I now live," and proceeds to declare that he shall have his support out of said property as long as he lives, and makes a like provision for E R. This language the court held vested a fee simple estate in the husband. And this estate is not defeated by the fact that she in a subsequent clause declared that if J W remained on the farm until the death of the above named person the residue of my estate shall fall to him.—*Wallace v. Hawes*, S. J. C. Me., Feb. 28, 1887; 8 Atl. Rep. 885.

316. WILL—Construction—Mistake.——A mistake in a will can only be corrected when it appears by fair inference from the whole instrument.—*Appeal of Hellerman*, S. C. Penn., March 21, 1887; 8 Atl. Rep. 768.

317. WILL—Construction—Power of Sale—Executory Devise.——A devise to A and the heirs of his body, etc., with authority to him to sell and convey in his lifetime, and to dispose of the same by will, vests the absolute title in A, and upon his death intestate the estate descends to his heirs. And this is so, although the will provides that, if he should die without having disposed of the estate by sale or will, it should be equally divided between B and C.—*Combs v. Combs*, Md. Ct. App., March 15, 1887; 8 Atl. Rep. 757.

318. WILL—Construction—Power—Sale—Trust—Partition.——A testatrix gave a certain share of her property to A and B for life, remainder to C. She gave the residue of her property to her executor "in trust for the execution of her will," for the payment of the income to D after payment of debts and legacies. *Held*, that the shares of A and B were not liable for the debts and legacies. A power of sale of realty may be implied from the language of a will. If no trustee is appointed when a trust is created, such trust devolves on the executor. Partition may be made in equity of a mixed trust estate.—*Terry v. Smith*, N. J. Ct. Chan., April 11, 1887; 8 Atl. Rep. 886.

319. WILL — Construction — Precatory Words. —— When the words "wish" and "desire" used in a will are precatory. When they are mandatory. An absolute devise in fee simple to a wife was followed by a clause in which the testator states that it is his "desire and wish" that, after his wife's death, his house and lot shall go to his daughter M. *Held*, that the testator gave his wife only a life estate, notwithstanding the previous absolute devise.—*Taylor v. Martin*, S. C. Penn., April 11, 1887; 8 Atl. Rep. 920.

320. WILL — Construction — Remainder.——Under a will giving an estate to testator's widow "for her benefit and support, to use and dispose of as she may think proper," a subsequent clause providing that any part of the estate that might remain at her death should be divided between testator's brothers and sisters, is void for repugnancy, and the widow takes an absolute estate.—*Stowell v. Stowell*, S. C. Vt., April 15, 1887; 8 Atl. Rep. 738.

321. WILL—Construction—Remainder.——A will that each of the testator's children should receive a share of the rents of the estate periodically as they are collected and if one should die he should be succeeded by his children. It was held that the testator's grandchildren received the remainder in fee.—*Davis v. Williams*, S. C. Tenn., April 22, 1887; 4 S. W. Rep. 8.

322. WILL—Construction—Survivorship—Tenancy in Common—Estoppel.——Devise to A, J and W. If either should die, without issue, his share to go to the other brothers "as above." W died and A and J took his share, then J died, intestate and unmarried, and A took all, mortgaged it, and the mortgage was foreclosed. J's heirs at law sued for the share of W's land which J received at the death of W: *Held*, that A received, under the will, only the share of J which he took under the will, not that which he received as survivor of W. As to that land A had no right by survivorship. The minority of some tenants in common protects the others against the statute of limitations. Mere acquiescence in adverse possession by persons ignorant of their rights is not an estoppel.—*McGee v. Hall*, S. C. S. Car., Feb. 28, 1887; 1 S. E. Rep. 711.

323. WILL—Devise—Construction—Survivorship.—— When A devises his property to his children, providing that in case of their death, it shall go to their children or to his surviving children, or to the heirs of their body, or such as may be living, all of his children, who survive him, take a fee simple in their interests.—*Wills v. Wills*, Ky. Ct. App., April 1, 1887; 3 S. W. Rep. 900.

324. WILLS—Devise—Trust—Life Estate—Legacy.—— Where property is left to trustees to hold during the life or widowhood of the wife of the testator, then to pay certain legacies by sales if necessary, and the residue to his son, the son takes a vested estate upon the death of the testator.—*Scofield v. Olcott*, S. C. Ill., March 23, 1887; 11 N. E. Rep. 351.

325. WILLS — Income — Dividends — Privilege. —— Where a testator directs the net income of his estate to be paid to his wife, she will not receive a dividend on stock declared before, but not paid till after his death; nor is the privilege of subscribing to new stock offered to stockholders to be considered as net income.—*In re Kernochan*, N. Y. Ct. App., March 8, 1887; 11 N. E. Rep. 149.

326. WILLS—Life Estate—Remainder.——A devise to two daughters during their life and to their children at their death, the child of a remainderman who dies during the life estate takes an interest in the land.—*Elkins v. Carsey*, S. C. Tenn., 1887; 3 S. W. Rep. 828.

327. WILLS — Probate — Appeal.—— In Illinois, the probate court has exclusive original jurisdiction in the probate of wills, and its decree is final unless appealed from; its proceeding is *in rem*, but upon appeal the case becomes *inter partes*, the appellants are the proponents of the will, and the other parties are the contestants.—*Storey v. Storey*, S. C. Ill., March 22, 1887; 11 N. E. Rep. 209.

328. WILLS—Probate—Collateral Attack.——The presumptions are in favor of the regularity of the proceedings of a court in admitting a will to probate, and in a collateral attack the question of the amount of proof offered in the probate court will not be considered. Its judgment is not void, because the proof of publication properly made was not filed prior thereto.—*Roberts v. Flanagan*, S. C. Neb. March 30, 1887; 32 N. W. Rep. 563.

329. WITNESS — Competency.——Where two parties are jointly indicted and one pleads guilty or is convicted on a separate trial, he is a competent witness for the other.—*State v. Hunt*, S. C. Mo., March 21, 1887; 3 S. W. Rep. 868.

330. WITNESS—Competency—Deceased Person—Equity Practice—Statute.——In Mississippi, under the statute of that State, one cannot be a witness to establish a demand against the estate of a deceased person if he is, or was at the time of the death of the deceased interested in the claim. A verified answer to a bill which is not sworn to, must be contradicted by two witnesses, or one with corroborating circumstances. This rule does not apply when the answer is on "information and belief."—*Snell v. Fewell*, S. C. Miss., April 18, 1887; 1 South. Rep. 908.

331. WITNESS — Cross-examination. ——The rule is, that the answers of a witness to questions asked upon cross-examination are conclusive, and cannot be contradicted by other witnesses. The exception is, however, that by other testimony the temper, disposition and conduct of the cross-examined witness may be shown.—*State v. Ballard*, S. C. N. Car., March 28, 1887; 1 S. E. Rep. 685

332. WITNESS—Interested Party—Release.——An interested party is not rendered a competent witness against the estate of a decedent by a release to his wife. —*Bonstead v. Cuyler*, S. C. Penn., April 4, 1887; 8 Atl. Rep. 848.

333. WITNESS—Privileged Communication — Attorney. ——Communications of the accused, made in answer to questions by one who had practiced law for many years before a justice of the peace, are privileged communications, though the party had never been licensed to practice law.—*Benedict v. State*, S. C. Ohio, March 1, 1887; 11 N. E. Rep. 125.

334. WITNESS—Refreshing Memory — Settlement.—— A witness may, to refresh his memory, use a paper containing a list of items. The paper is not itself admissible. When an alleged settlement is attacked, what may be proved.—*Mead v. White*, S. C. Penn., March 28, 1887; 8 Atl. Rep. 913.

335. WRITS — By Clerk when Plaintiff.—— In North Carolina, the clerk of a superior court may, in an action in his own behalf, himself issue the summons and other process.—*Evans v. Etheridge*, S. C. N. Car., March 3, 1887; 1 S. E. Rep. 633.

336. WRIT OF ERROR—Want of Prosecution.—— If there are no assignments of error (U. S. Rev. Stat. § 997) and no appearance of counsel for appellant, the judgment will be affirmed for want of prosecution.—*Dugger v. Taylor*, U. S. S. C., April 18, 1887; 7 S. C. Rep. 895.

CORRESPONDENCE.

To the Editor of the Central Law Journal:

SIR—There is no doubt that the act modifying the jurisdiction of the federal courts, approved March 3, 1887, is open to the gravest criticism. Your correspondent, "Obscuratus," in his communication of April 26, 1887, published in No. 18, p. 430, current volume, seems to have overdone the matter a trifle, however. To his mind, "the grand *piecę de resistance* is to be found in the penultimate clause of the first section," which he quotes with italics, small caps and exclamation points as follows:

"*Nor shall any circuit or district court have cognizance of any suit except upon foreign bills of exchange, to recover* THE CONTENTS (!) *of any* PROMISSORY (!) *note or other chose in action in favor of any assignee, or of any subsequent holder, etc.*"

Thus making the words "contents" and "promissory" the gravamen of the offense on the part of congress. But this language is copied word for word from section 11 of the judiciary act of 1789 and section 629 of the United States Revised Statutes, 1873. In this respect, therefore, the action of congress, in following the language of previous enactments, is to be approved rather than condemned, as the courts and the profession have had abundant opportunity to determine and know the meaning of such language.

In Corbin, against county of Black Hawk, 105 U. S., 665, opinion by Mr. Justice Blatchford, the following definition is given:

"The CONTENTS (!) of a contract, as a chose in action, in the sense of section 629, are the rights created by it in favor of a party in whose behalf stipulations are made in it which he has a right to enforce in a suit founded on the contract; and a suit to enforce such stipulations is a suit to recover such contents. The promise to pay money, contained in a promissory note, is all that there is of the note. A suit to enforce the payment of the money is a suit to recover the contents of the note, because there is nothing contained in the note but the promise."

The crude provisions and clumsy and confused language of the act are certainly open to the severest condemnation, and it is to be hoped that "Obscuratus" will direct his acute criticisms to those portions of it which have defied all precedents in legislation, as well as in the use of the much abused mother tongue.

Yours respectfully, C.

Cedar Rapids, Iowa, May 14, 1887.

Non nostrum tantas componere lites, but we venture to remark that two wrongs never made a right. As to the blunder about "contents," if it is a blunder, it seems to be very venerable, having been originally made nearly a hundred years ago by jurists of great distinction. Whether the statute of limitations or the doctrine of *stare decisis* applies in such a case, is a question which we remit to our learned correspondents.—[ED. CENT. L. J.

QUERIES AND ANSWERS.*

[*Correspondents are requested to draw up their answers in the form in which we print them, and not in the form of letters to the editor. They are also admonished to make their answers as brief as may be.—Ed.*]

Query No. 27.—Does a note with this erasure draw interest in the hands of a third party: "with interest at the rate of —— per annum, payable annually at office of," etc. X. Y.

Query No. 28.—In 1848, a father conveyed land to his three infant daughters, providing: 1. For his continuance of possession in trust for grantees, their heirs, etc., he to collect rents, etc., for their maintenance, etc. 2. That he might sell or exchange, holding consideration received for them, their heirs, etc. 3. That if he lived till they attained majority, he could partition among all, or give to any one her proportionate share; but their majority should not affect the trust, and he should not be compelled to partition. 4. Partition might be made after his death. In 1872, these daughters being of age and married, conveyed said land to their mother, with his knowledge and consent. He remains in possession. The mother died since 1872, as also one of the daughters, the latter leaving several infant children. At the mother's death there were six other children, issue subsequent to deed of 1848; later, one of these, a married woman, died, leaving infant children. Three of said six died unmarried. Survivors are, the father, two of the *cestuis que trustent* under deed of 1848, infant children of the third, two married daughters of the six born after that deed, and an infant heir of the remaining married one of the said six. Query: What, under deed of 1848, did grantees take? What power of disposition of the land did that deed confer on the grantor, and in case he conveyed, was it necessary for *cestuis que trustent* to join him in the deed? What did the mother take under deed of 1872? Can a valid title be made now by the father alone, or would it be necessary to have the interest of the various infant heirs named, if they have any divested? W.

QUERIES ANSWERED.

Query No. 31. [23 Cent. L. J. 504.]—If the jury believe from the evidence that Mrs. ———, for the purpose of influencing said testator in making his will, raised prejudices in his mind against those who would otherwise have been the natural objects of his bounty, and by contrivance kept him from intercourse with such persons to the end, that those prejudices or impressions which she knew he had thus formed to the disadvantage of such persons (if the jury so believe) might be removed, then the jury are entitled to consider these facts in connection with other facts in the case; in deciding the issue relative to undue influence. But such facts would not of themselves amount to such proof as the law requires of undue influence sufficient to invalidate the will.

The above instruction was given to the jury in a will case, and was objected to by the contestants. The verdict sustained the will. The Mrs. ——— was distantly related to testator, and testimony proved the testator to be blind, over 80 years of age, and confined to his bed-room at the time of making will, by which, relatives more nearly related than the Mrs. ———, were excluded. Is the instruction correct? Cite authorities. J.

Answer. In a case of alleged fraud, attending the making of a will, all the circumstances bearing on the question are admissable. However, to upset a will, it must be shown that the will power of the deceased was overcome, which the facts alleged in the instruction do not show. 1 Redfield on Wills, 508-537.

We think that the instruction was correct, as an abstract proposition of law, but if the facts mentioned subsequently had been embodied in the instruction, the conclusion therefrom, as to the validity of the will, should have been left to the jury. Idem. S. S. M.

Query No. 32. [23 Cent. L. J. 552.] A sells to B, at public sale, a pure bred Hereford cow, and states that she is in calf by a certain famous Hereford bull, owned by A. In order to get a representative from such a noted sire, B bids to $1,000, and gets the cow. The calf comes in due season, and proves to be a male. B uses this calf as a yearling, breeding him to some twenty or thirty cows, among them a number of pure bred cows. The distinctive outward features of the Herefore cattle are a white face, red body and quite prominent horns, and the exception to his rule is very scarce. When the calves come that are sired by this yearling, they prove to be of all colors—red, white, black, yellow, etc., some horned and some hornless, and this out of pure bred Hereford cows, as well as out of ordinary cows. These same cows, to a different Hereford sire, brought calves properly marked. A insists that the pedigree of the young sire is all right, and declines to take any steps in the matter, claiming that he could not be held responsible for the second generation from animals sold by him. B claims, however, that he paid a high price for the cow in the hope of getting a male, and having him hand down in his turn the distinctive features of the Hereford cattle, and that the failure to do so is a damage that A should make good. In other words, A sells B a cow in calf for breeding purposes in a Hereford herd. The calf breeds all right, except his calves lack the color and formation of Herefords, as established in their herd book, and consequently are of but little more value than common stock. Who should stand the loss?

ARBITRATOR.

Answ B nas no claim against A, unless A made false representations. If the laws of generation are so well established, that it is impossible the yearling can be a pure Hereford, B has a right of action; if it is not so, then B must stand the loss. Of course this presupposes that A will prove to his assertion. M.

Query No. 2. [24 Cent. L. J. 47.] Is there any authority for the proposition that the driving, in the night time, of a horse totally blind over a public highway, is negligence in law. Cite authorities, if any, *pro* and *con*. E. P. P.

Answer. We find no authority on the subject. Highways are for public travel, and certainly the same mode of travel, which is admissible by day, is admissible by night. When the dangers are increased, greater care must be taken. Traveling on a very dark night is not considered negligent, and driving a blind horse at night is an act of the same nature. S.

RECENT PUBLICATIONS.

THE AMERICAN DECISIONS, containing the Cases of General Value and Authority decided in the Courts of the Several States from the Earliest Issue of the State Reports to the year 1869. Compiled and Annotated by A. C. Freeman, Counselor at Law and Author of "Treatises on the Law of Judgments," "Co-Tenancy and Partition," "Executions in Civil Cases," etc. Vol. LXXXIII. San Francisco: Bancroft-Whitney Company, Law Publishers and Law Booksellers. 1887.

We have repeatedly noticed the predecessors of this volume in terms of unqualified approbation and have really nothing to add in commendation of this issue, except to say that even more than its fellows it is enriched by the full and very learned notes of the accomplished editor, who has conferred by their compilation a benefit upon the profession, the value of which cannot be over estimated.

The collection which is designed to close with the year 1869, now approaches its conclusion, as the cases reported in this volume were decided in the year 1863 and, when complete, it will be a body of law of infinite use to the profession and unsurpassed by any similar compilation.

JETSAM AND FLOTSAM.

CONTINGENT BLISS.—Once Justice Byles was for the defendant in an action for breach of promise of marriage. The plaintiff proved the promise to marry, and that the defendant had married some one else. The case seemed a question of damages, but Byles put two questions to the plaintiff:

"Did not he promise to marry you when his father was dead?"

"Yes."

"Is his father dead?"

"No."

"That is the case, my lord," said Byles; "his wife may die before his father, or afterward, and he may out-live them both, when it will be time to fulfill the promise."

TRENCHANT.—Roscoe Conkling has not forgotten the peculiar metaphors of his Senate days. The latest remark credited to him refers to his efforts to impeach the testimony of a red-nosed witness who, Mr. Conkling thought, had lied while in the witness chair. In addressing the jury Mr. Conkling spoke of him thus: "Gentlemen, I think I can see that witness now, with a mouth stretching across the wide desolation of his face, a fountain of falsehood and a sepulcher of rum."